EUROPEAN PARLIAMENT

2004 *2009*

Committee on Civil Liberties, Justice and Home Affairs

PROVISIONAL
2004/0113(CNS)

11.1.2005

*

DRAFT REPORT

on the proposal for a Council framework decision on certain procedural rights in criminal proceedings throughout the European Union
(COM(2004)0328 – C6-0071/2004 – 2004/0113(CNS))

Committee on Civil Liberties, Justice and Home Affairs

Rapporteur: Kathalijne Maria Buitenweg

Symbols for procedures

*	Consultation procedure *majority of the votes cast*
**I	Cooperation procedure (first reading) *majority of the votes cast*
**II	Cooperation procedure (second reading) *majority of the votes cast, to approve the common position* *majority of Parliament's component Members, to reject or amend the common position*
***	Assent procedure *majority of Parliament's component Members except in cases covered by Articles 105, 107, 161 and 300 of the EC Treaty and Article 7 of the EU Treaty*
***I	Codecision procedure (first reading) *majority of the votes cast*
***II	Codecision procedure (second reading) *majority of the votes cast, to approve the common position* *majority of Parliament's component Members, to reject or amend the common position*
***III	Codecision procedure (third reading) *majority of the votes cast, to approve the joint text*

(The type of procedure depends on the legal basis proposed by the Commission)

Amendments to a legislative text

In amendments by Parliament, amended text is highlighted in ***bold italics***. Highlighting in *normal italics* is an indication for the relevant departments showing parts of the legislative text for which a correction is proposed, to assist preparation of the final text (for instance, obvious errors or omissions in a given language version). These suggested corrections are subject to the agreement of the departments concerned.

CONTENTS

Page

DRAFT EUROPEAN PARLIAMENT LEGISLATIVE RESOLUTION 5

DRAFT EUROPEAN PARLIAMENT LEGISLATIVE RESOLUTION

on the proposal for a Council framework decision on certain procedural rights in criminal proceedings throughout the European Union
(COM(2004)0328 – C6-0071/2004 – 2004/0113(CNS))

(Consultation procedure)

The European Parliament,

– having regard to the Commission proposal (COM(2004)0328)[1],

– having regard to Article 31(1) (c) of the EU Treaty,

– having regard to Article 39 (1) of the EU Treaty, pursuant to which the Council consulted Parliament (C6-0071/2004),

– having regard to Rules 93 and 51 of its Rules of Procedure,

– having regard to the report of the Committee on Civil Liberties, Justice and Home Affairs and the opinion of the Committee on Legal Affairs (A6-0000/2005),

1. Approves the Commission proposal as amended;

2. Calls on the Commission to alter its proposal accordingly, pursuant to Article 250(2) of the EC Treaty;

3. Calls on the Council to notify Parliament if it intends to depart from the text approved by Parliament;

4. Instructs its President to forward its position to the Council and Commission.

Text proposed by the Commission	Amendments by Parliament
	Amendment 1 Recital 5 a (new)
	(5a) The rights laid down in the European Convention for the Protection of Human Rights and Fundamental Freedoms (ECHR) should be regarded as minimum standards with which Member States should in any event comply, just as they should comply with the case-law of the European Court on Human Rights.

[1] Not yet published in OJ.

Amendment 2
Recital 7

(7) The principle of mutual recognition is based on a high level of confidence between Member States. In order to enhance this confidence, this Framework Decision provides certain safeguards to protect fundamental rights. These safeguards reflect the traditions of the Member States in following the provisions of the ECHR.	(7) The principle of mutual recognition is based on a high level of confidence between Member States. In order to enhance this confidence, this Framework Decision provides certain safeguards to protect fundamental rights. These safeguards reflect the traditions of the Member States in following the provisions of the ECHR ***and of the Charter of Fundamental Rights of the European Union.***

Amendment 3
Recital 8

(8) The proposed provisions are not intended to affect specific measures in force in national legislations in the context of the fight against certain serious and complex forms of crime in particular terrorism.	***deleted***

Amendment 4
Recital 10 a (new)

	(10a) This Framework Decision should be evaluated within two years after its entry into force in the light of the experience gained. If appropriate, it should be amended so as to improve the safeguards laid down.

Amendment 5
Recital 16

(16) The right to consular assistance exists by virtue of Article 36 of the 1963 Vienna Convention on Consular Relations where it is a right conferred on States to have access	(16) The right to consular assistance exists by virtue of Article 36 of the 1963 Vienna Convention on Consular Relations where it is a right conferred on States to have access

to their nationals. The provisions of this Framework Decision confer the right on the European citizen rather than the State. They enhance its visibility and therefore its effectiveness. ***That said, in the longer term, the creation of an area of freedom, security and justice in which trust is reciprocated between Member States should reduce and ultimately abolish the need for consular assistance.***	to their nationals. The provisions of this Framework Decision confer the right on the European citizen rather than the State. They enhance its visibility and therefore its effectiveness.

Amendment 6
Recital 18

(18) It is necessary to establish a mechanism to assess the effectiveness of this Framework Decision. Member States should therefore gather and record information for the purpose of evaluation and monitoring. The information gathered will be used by the Commission to produce reports that will be made publicly available. This will enhance mutual trust since each Member State will know that other Member States are complying with fair trial rights.	(18) It is necessary to establish a mechanism to assess the effectiveness of this Framework Decision. Member States should therefore gather and record information, ***including information from NGOs, intergovernmental organisations and the professional bodies of lawyers, interpreters and translators,*** for the purpose of evaluation and monitoring. The information gathered will be used by the Commission to produce reports that will be made publicly available. This will enhance mutual trust since each Member State will know that other Member States are complying with fair trial rights.

Amendment 7
Recital 18 a (new)

	(18a) The future Human Rights Agency could also play an important role in collecting and analysing such information.

Amendment 8
Article 1, paragraph 1, subparagraph 2

Such proceedings are referred to hereafter as "criminal proceedings".	***deleted***

Amendment 9
Article 1, paragraph 2

2. The rights ***will*** apply to any person suspected of having committed a criminal offence ("a suspected person") from the time when he is ***informed*** by the competent authorities of a Member State ***that he is suspected of having committed a criminal offence*** until finally judged.	2. The rights ***shall*** apply to any person suspected of having committed a criminal offence ("a suspected person") ***or, where the suspected person is a legal person, to the legal person's representative,*** from the time when he is ***apprehended*** by the competent authorities of a Member State until finally judged. *(Throughout the text, the pronoun "he" should also be understood as "she")*

Amendment 10
Article 1 a, title and introductory part (new)

	Article 1a
	Definitions
	For the purposes of this Framework Decision, the following definitions shall apply:

Amendment 11
Article 1 a, point (a) (new)

	(a) "legal advice" means:
	- the assistance provided by a lawyer to a suspected person before and during any police questioning in relation to the offence of which that person is suspected;
	- the assistance provided to, and the representation of, a suspected person by a lawyer throughout criminal proceedings.

Amendment 12
Article 1 a, point (b) (new)

	(b) "criminal proceedings" means:
	(i) proceedings for establishing the guilt

or innocence of a suspected person or for sentencing that person ;

(ii) an appeal from proceedings as referred to in point (i) or
(iii) proceedings brought by administrative authorities in respect of acts which are punishable under the law of a Member State , and where the decision may give rise to proceedings before a court having jurisdiction in particular in criminal matters.

Amendment 13
Article 1 a, point (c) (new)

(c) "law enforcement officer" means the investigating officer, the arresting officer, the officer who takes the decision that the suspected person is to be arrested or signs any document necessary to make an arrest or the custody officer.

Amendment 14
Article 1 a, point (d) (new)

(d) "international humanitarian organisation" means an international organisation the mission of which includes protecting the interests of non-national suspected persons. Unless individual Member States decide otherwise, the most appropriate "international humanitarian organisation" shall be the International Committee of the Red Cross.

Amendment 15
Article 2, paragraph 1

1. A suspected person ***has*** the right to legal advice ***as soon as possible*** and throughout	1. A suspected person ***shall have*** the right to legal advice ***within 6 hours after arrest***

the criminal proceedings ***if he wishes to receive it.***	and throughout the criminal proceedings.

Amendment 16
Article 2, paragraph 2

2. A suspected person ***has*** the right to receive legal advice before answering questions in relation to the ***charge.***	2. A suspected person ***shall have*** the right to receive legal advice before, ***or to have a lawyer present while,*** answering questions in relation to the ***offence of which he is suspected.***

Amendment 17
Article 2, paragraph 2 a (new)

	2a. A lawyer shall have the right:
	- to visit, talk with and correspond in writing with the suspected person whom he is representing in private and in full confidence.
	- to have access to material concerning the case;
	- to be informed about and be present during any further investigatory steps, including the right to be present during questioning of the suspected person whom he is representing;
	- to be present and to ask questions before the court at pre-trial hearings or during trial.

Amendment 18
Article 3, introductory wording

Notwithstanding the right of a suspected person to refuse legal advice or to represent himself in any proceedings, it is required that ***certain*** suspected persons be offered legal advice so as to safeguard fairness of proceedings. Accordingly, Member States shall ensure that legal advice is available to any suspected person who:	Notwithstanding the right of a suspected person to refuse legal advice or to represent himself in any proceedings, it is required that suspected persons be offered legal advice so as to safeguard fairness of proceedings. Accordingly, Member States shall ensure that legal advice is available to any suspected person who:

Amendment 19
Article 3, indent 5

– appears not ***to*** be able to understand or follow the content or the meaning of the proceedings owing to his age, mental, physical or emotional condition.	– ***is likely or*** appears ***to*** not be able to understand or follow the content or the meaning of the proceedings owing to his age, mental, physical or emotional condition.

Amendment 20
Article 4, paragraph 2

2. Member States shall ensure that ***a mechanism exists to*** provide a replacement lawyer ***if the legal advice given is found not to be effective.***	2. Member States shall ensure that ***an independent body composed of independent lawyers is charged with hearing complaints about the effectiveness of a defence lawyer. If appropriate, that body may*** provide a replacement lawyer.

Amendment 21
Article 5, paragraph 1

1. ***Where Article 3 applies,*** the costs of legal advice ***shall be borne*** in whole or in part ***by the Member States*** if ***these*** costs would cause undue financial hardship to the suspected person or his *dependents.*	1. ***Member States shall bear*** the costs of legal advice in whole or in part if ***those*** costs would cause undue financial hardship to the suspected person or his *dependants*.

Amendment 22
Article 6, paragraph 1

1. Member States shall ensure that a suspected person who does not understand the language of the proceedings is provided with free interpretation in order to safeguard the fairness of the proceedings.	1. Member States shall ensure that a suspected person who does not understand ***or speak*** the language of the proceedings is provided with free interpretation in order to safeguard the fairness of the proceedings.

Amendment 23
Article 6, paragraph 2

2. Member States shall ensure that, where	2. Member States shall ensure that, where a

necessary, a suspected person ***receives free interpretation of legal advice received throughout the criminal proceedings.***	suspected person ***does not understand or speak the language of the proceedings, an interpreter is present:*** ***- at all meetings between the suspected person and his lawyer , if the lawyer or the suspected person considers it necessary;*** ***- whenever the suspected person is questioned by law enforcement officers concerning the offence of which he is suspected.*** ***- whenever the suspected person is required to appear in court in connection with the offence.***

Amendment 24
Article 7, paragraph 1

1. Member States shall ensure that a suspected person who does not understand the language of the proceedings is provided with free translations of all relevant documents in order to safeguard the fairness of the proceedings.	1. Member States shall ensure that a suspected person who does not understand ***or read*** the language of the proceedings ***or the language in which relevant documents are drafted where they are not in the language of the proceedings*** is provided with free translations of all relevant documents in order to safeguard the fairness of the proceedings.

Amendment 25
Article 11, paragraph 2

2. Member States shall ensure that medical assistance is provided whenever necessary.	2. Member States shall ensure that medical ***and psychological*** assistance is provided whenever necessary.

Amendment 26
Article 11, paragraph 3

3. ***Where appropriate, specific attention may include the right to have*** a third person present during any questioning by police or judicial authorities.	3. ***Member States shall ensure that, where a suspected person or his lawyer so requests,*** a third person ***is entitled to be*** present during any questioning by police or judicial authorities.

Amendment 27
Article 12, paragraph 1

1. A suspected person remanded in custody ***has*** the right have his family, persons assimilated to his family or his place of employment informed of the detention ***as soon as possible.***	1. A suspected person remanded in custody ***or transferred to another place of custody shall have*** the right ***to*** have his family, persons assimilated to his family or his place of employment informed of the detention ***without delay***

Amendment 28
Article 13, paragraph 1

1. Member States shall ensure that a detained suspected person who is a non-national shall have the right to have the consular authorities of his home State informed of the detention ***as soon as possible*** and to communicate with the consular authorities if he so wishes.	1. Member States shall ensure that a detained suspected person who is a non-national shall have the right to have the consular authorities of his home State informed of the detention ***without delay*** and to communicate with the consular authorities if he so wishes.

Amendment 29
Article 14, paragraph 2

2. Member States shall ensure that a standard translation exists of the written notification into all the official Community languages. The translations should be drawn up centrally and issued to the competent authorities so as to ensure that the same text is used throughout the Member ***State***.	2. Member States shall ensure that a standard translation exists of the written notification into all the official Community languages. The translations should be drawn up centrally and issued to the competent authorities so as to ensure that the same text is used throughout the Member ***States.***

Amendment 30
Article 14, paragraph 2 a (new)

	2a. If necessary, Member States shall ensure that a standard translation exists of the written communication into languages of third countries.

Amendment 31
Article 15, paragraph 1

1. Member States shall ***facilitate the collection of*** the information necessary for evaluation and monitoring of this Framework Decision.	1. ***Every year,*** Member States shall ***gather, including from NGOs, intergovernmental organisations and the professional bodies of lawyers, interpreters and translators, and forward to the Commission*** the information necessary for evaluation and monitoring of this Framework Decision

Amendment 32
Article 15, paragraph 2

2. Evaluation and monitoring shall be carried out under the supervision of the ***European*** Commission which shall co-ordinate reports on the evaluation and monitoring exercise. Such reports ***may*** be published.	2. Evaluation and monitoring shall be carried out ***yearly*** under the supervision of the Commission which shall co-ordinate reports on the evaluation and monitoring exercise. Such reports ***shall be*** published.

Amendment 33
Article 16, paragraph 1

1. ***In order that evaluation and monitoring of the provisions of this Framework Decision may be carried out,*** Member States shall ensure that ***data such as relevant statistics are*** kept and made available ***, inter alia, as regards the following***:	1. Member States shall ***take the necessary measures*** to ensure that***, by 31 March each year, the following information in respect of the preceding calendar year is*** kept and made available:

Amendment 34
Article 16, paragraph 2

2. Evaluation and monitoring shall be carried out at regular intervals, by analysis of the data provided for that purpose and collected by the Member States in accordance with the provisions of this article.	***deleted***