Basic information

2004/0113(CNS) CNS - Consultation procedure JHA act	Procedure lapsed or withdrawn
Criminal judicial cooperation: procedural rights in criminal proceedings throughout European Union **Subject** 7.40.04 Judicial cooperation in criminal matters	

Key players

European Parliament

Committee responsible	Rapporteur	Appointed
LIBE Civil Liberties, Justice and Home Affairs	BUITENWEG Kathalijne Maria (Verts/ALE)	26/07/2004

Committee for opinion	Rapporteur for opinion	Appointed
JURI Legal Affairs	GARGANI Giuseppe (PPE-DE)	26/10/2004

Council of the European Union

Council configuration	Meetings	Date
Justice and Home Affairs (JHA)	2732	2006-06-01
Justice and Home Affairs (JHA)	2807	2007-06-12
Justice and Home Affairs (JHA)	2725	2006-04-27
Justice and Home Affairs (JHA)	2969	2009-10-23
Justice and Home Affairs (JHA)	2768	2006-12-04
Justice and Home Affairs (JHA)	2794	2007-04-19
Justice and Home Affairs (JHA)	2696	2005-12-01

European Commission

Commission DG	Commissioner
External Relations	FERRERO-WALDNER Benita

Key events

Date	Event	Reference	Summary
28/04/2004	Legislative proposal published	COM(2004)0328	Summary

15/09/2004	Committee referral announced in Parliament		
16/03/2005	Vote in committee		
21/03/2005	Committee report tabled for plenary, 1st reading/single reading	A6-0064/2005	
11/04/2005	Debate in Parliament		
12/04/2005	Decision by Parliament	T6-0091/2005	Summary
12/04/2005	Results of vote in Parliament		
01/12/2005	Debate in Council		Summary
27/04/2006	Debate in Council		
01/06/2006	Debate in Council		Summary
04/12/2006	Debate in Council		
19/04/2007	Debate in Council		Summary
12/06/2007	Debate in Council		Summary
23/10/2009	Debate in Council		Summary

Technical information

Procedure reference	2004/0113(CNS)
Procedure type	CNS - Consultation procedure
Procedure subtype	Legislation
Legislative instrument	JHA act
Legal basis	EC Treaty (after Amsterdam) EC 031-p1
Stage reached in procedure	Procedure lapsed or withdrawn
Committee dossier	LIBE/6/22045

Documentation gateway

European Parliament

Document type	Committee	Reference	Date	Summary
Committee opinion	JURI	PE350.282	03/02/2005	
Committee report tabled for plenary, 1st reading/single reading		A6-0064/2005	21/03/2005	
Text adopted by Parliament, 1st reading/single reading		T6-0091/2005 OJ C 033 09.02.2006, p. 0027-0169 E	12/04/2005	Summary

European Commission

Document type	Reference	Date	Summary
Legislative proposal	COM(2004)0328	28/04/2004	Summary

Document attached to the procedure	SEC(2004)0491	28/04/2004	

Additional information		
Source	Document	Date
European Commission	EUR-Lex	

Criminal judicial cooperation: procedural rights in criminal proceedings throughout European Union

2004/0113(CNS) - 19/04/2007

The Council decided to further its work on this proposal with a view to reaching an agreement in June 2007.

In June 2006, the Council agreed on the principles for further work on this proposal. It was concluded that the scope of the proposed Council Framework Decision would be limited to the right to information, the right to legal assistance, the right to legal assistance free of charge, the right to interpretation and the right to translation of documents of the procedure. The Council also instructed its preparatory bodies to examine practical measures. At its meeting on 15/16 June 2006, the European Council urged the finalisation of negotiations on the procedural rights in criminal proceedings.

Criminal judicial cooperation: procedural rights in criminal proceedings throughout European Union

2004/0113(CNS) - 01/06/2006

The Council held an exchange of views on this proposal, in particular on the question of the legal basis for the instrument, and agreed to continue working on the basis of a Presidency compromise based on the following principles:

- only minimum standards are established and there is no "upper limit" of rights. Consequently, Member States will not be prevented from providing for more far-reaching rights for suspects in criminal proceedings;
- there will be full compliance with the rights enshrined in the European Convention of Human Rights and the case law of the European Court of Human Rights. Member States will not be allowed to go below this level.

As compared to the Commission proposal, the Presidency proposal limited the number and scope of the rights covered and focused on general standards rather than specifying in detail how the rights will be applied in each Member State in view of the different procedural systems.

The areas where common minimum standards were proposed by the Presidency are:

- right to information,
- right to legal assistance,
- right to interpretation, and
- right to translation of procedural documents for any person subject to criminal proceedings.

Furthermore, the Council agreed that further work on procedural rights should also include work on practical measures.

The original proposal was submitted by the Commission on 3 May 2004 with a view to setting common minimum standards as regards certain procedural rights applying in criminal proceedings throughout the EU.

Criminal judicial cooperation: procedural rights in criminal proceedings throughout European Union

2004/0113(CNS) - 28/04/2004 - Legislative proposal

PURPOSE : to set common minimum standards as regards certain procedural rights applying in criminal proceedings throughout the European Union. PROPOSED ACT : Council Framework Decision. CONTENT : following the Commission's Green Paper in February 2003, the overwhelming majority of respondents endorsed the Commission's proposal to set common minimum standards for procedural safeguards. This proposal seeks to enhance

the rights of all suspects and defendants in criminal proceedings generally. The scope of the proposal ensures that there is no differentiation between EU national and third country nationals. The areas where common minimum standards are proposed at this stage are: - access to legal advice, both before the trial and at trial; - access to free interpretation and translation; - ensuring that persons who are not capable of understanding or following the proceedings receive appropriate attention; - the right to communicate, inter alia, with consular authorities in the case of foreign suspects, and - notifying suspected persons of their rights (by giving them a written "Letter of Rights"). The decision to make proposals in relation to these five rights at this stage was taken because these rights are of particular importance in the context of mutual recognition, since they have a transnational element which is not a feature of other fair trial rights, apart from the right to bail which is being covered separately in a forthcoming Green Paper. The package of measures will ensure that the rights of the foreign suspect or defendant are protected even if he does not understand the language of the host country or have any knowledge of the criminal justice system. Ensuring that the rights of foreign suspects and defendants are properly respected will have the dual effect of improving each Member State's perceptions of the justice systems of the other Member States and filter-down consequences for all suspects and defendants. All Member States are parties to the European Convention for the Protection of Human Rights and Fundamental Freedoms (ECHR). However, experience has shown that, despite the need for such confidence, there is not always sufficient trust in the criminal justice systems of other Member States and this notwithstanding the fact that they are all signatories to the ECHR. The rights proposed will operate so as to strengthen mutual trust and thereby enhance the operation of mutual recognition in all its forms as regards criminal matters. Implementation of the principle of mutual recognition of decisions in criminal matters presupposes that Member States have trust in each other's criminal justice systems. The proposal includes the duty on the Member States to collect data, and a non-regression clause.

Criminal judicial cooperation: procedural rights in criminal proceedings throughout European Union

2004/0113(CNS) - 12/06/2007

The Council held a public debate on a proposal for a Council Framework Decision on certain procedural rights in criminal proceedings throughout the European Union. In the light of the debate, the Presidency concluded that the Council was not able to reach a consensus on this file.

It should be noted that at its meeting on 19 April 2007, the Council concluded that work should be pursued in order to reach a consensus on the scope of the instrument at the Council meeting in June. The dividing line was the question whether the Union was competent to legislate on purely domestic proceedings (at least 21 Member States share this view) or whether the legislation should be devoted solely to cross-border cases.

Criminal judicial cooperation: procedural rights in criminal proceedings throughout European Union

2004/0113(CNS) - 01/12/2005

The Council took note of progress made with the negotiation of this Framework Decision on procedural rights in criminal proceedings throughout the EU.

To recall, the areas where common minimum standards are proposed by the Commission are:

- access to legal advice;

- access to free interpretation and translation;

- ensuring that persons who are not capable of undertaking for following the proceedings receive appropriate attention;

- the right to communicate, inter alia, with consular authorities in the case of foreign suspects;

- notifying suspected persons of their rights.

Criminal judicial cooperation: procedural rights in criminal proceedings throughout European Union

2004/0113(CNS) - 23/10/2009

The Council reached agreement on a package of three documents aimed at strengthening procedural rights of suspected or accused persons in criminal proceedings. It is the first time that justice ministers agreed on texts enhancing the rights of individuals in criminal proceedings. Previous negotiations failed in 2007. Ministers therefore expressed great satisfaction and underlined that the new texts will increase mutual confidence among Member States. They also welcomed the Presidency's decision to address the various procedural rights in a step-by-step approach.

Once adopted, the texts will complement the rights set out in the European Convention for the Protection of Human Rights and Fundamental Freedoms, to which all Member States are party.

The texts that were agreed upon are:

- a roadmap identifying the main areas on which legislative or other initiatives are desirable;
- the first legislative proposal in this area, namely the framework decision on the right to interpretation and to translation, as well as
- an accompanying resolution fostering the implementation of the framework decision.

The roadmap defines a step-by-step approach. It sets out six priority areas on which legislative or other initiatives are desirable while underlining that it should be examined to take action in other fields as well. These six areas are:

- translation and interpretation;
- information on rights and information about the charges;
- legal advice and legal aid;
- communication with relatives, employers and consular authorities;
- special safeguards for suspected or accused persons who are vulnerable, and
- a Green Paper on pre-trial detention.

On the first group of rights, the right to interpretation and to translation, ministers reached an agreement, awaiting the opinion by the European Parliament. They also agreed on an accompanying resolution fostering its implementation through guidelines on best practices.

The situation as it stands can be described as follows:

Roadmap: France, Ireland, the Netherlands, and the United Kingdom have a Parliamentary scrutiny reservation. Latvia has a linguistic scrutiny reservation. There are no issues outstanding.

Framework Decision: the Czech Republic, Denmark, France, Lithuania, Malta, the Netherlands, Slovenia and the United Kingdom have a Parliamentary scrutiny reservation. Latvia has a linguistic scrutiny reservation. There are no issues outstanding.

It is observed that Slovenia suggested submitting the text to the Secretariat of the Council of Europe, as it results from the discussions in the Council bodies, in order to verify whether this text is in conformity with the ECHR, as interpreted by the European Court of Human Rights. The Presidency notes that the Secretariat of the Council of Europe has been informally consulted on all three draft instruments, has taken a view on the initiatives and has submitted positive opinions on them. The comments of the Secretariat of the Council of Europe have been decisive for the Presidency's negotiations all along the procedure.

Resolution: Denmark, France, Ireland, Lithuania, Malta, the Netherlands, Slovenia and the United Kingdom have a Parliamentary scrutiny reservation. Latvia has a linguistic scrutiny reservation. There are no issues outstanding.

Criminal judicial cooperation: procedural rights in criminal proceedings throughout European Union

2004/0113(CNS) - 12/04/2005 - Text adopted by Parliament, 1st reading/single reading

The European Parliament adopted a resolution by 523 votes in favour to 68 against with 13 abstentions on procedural rights in criminal proceedings. The resolution was drafted by Kathalijne Maria BUITENWEG (Greens/EFA, NL). Parliament made some amendments, principally the following:

- the words "as soon as possible" are replaced by "without undue delay";

- a new recital states that the rights laid down in the 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;

- all measures shall be in conformity with the ECHR and the Charter of Fundamental Rights of the European Union;

- the 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;

- suspected persons with a visual handicap or reading disabilities should be notified orally of their basic rights;

- Parliament inserted a new article defining terms such as “legal advice”, “criminal proceedings” and “persons assimilated to family members”;

- a new article states that before they make statements or as soon as they are subject to measures which restrict their freedom, whichever is sooner, suspected persons shall be entitled to be informed by the authorities of the charges laid against them and of the grounds for suspicion;

- a suspected person must have right to legal advice within twenty four hours of arrest;

- the suspected person must have certain rights relating to the confidentiality of advice;

- failure to respect the right to legal advice shall invalidate all subsequent acts and those dependent on them throughout the criminal proceedings;

- Member States shall ensure that the lawyer has access to the entire case-file within good enough time to be able to prepare the defence;

- the procedural time limits laid down in the framework decision shall not start to run until the lawyer has been notified - irrespective of whether the suspected person was notified on an earlier date;

- Interpreters certified by the competent judicial authorities shall be listed in a national register of interpreters;

- failure to assess and notify the vulnerability of the suspected person shall, if not remedied, invalidate any subsequent action taken in the criminal proceedings;

- the written notification - the Letter of Rights - shall be presented to the suspected person when he is first questioned, whether in the police station or elsewhere.

Finally, Parliament laid down that every year, Member States must 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.