THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty establishing the European Union, and in particular Article 29, Article 31(e) and Article 34(2)(b) thereof,

Having regard to the proposal from the Commission (1),

Having regard to the opinion of the European Parliament (2),

Whereas:

(1) The European Union is founded on the universal values of human dignity, liberty, equality and solidarity, respect for human rights and fundamental freedoms. It is based on the principle of democracy and the principle of the rule of law, principles which are common to the Member States.

(2) Terrorism constitutes one of the most serious violations of those principles. The La Gomera Declaration adopted at the informal Council meeting on 14 October 1995 affirmed that terrorism constitutes a threat to democracy, to the free exercise of human rights and to economic and social development.

(3) All or some Member States are party to a number of conventions relating to terrorism. The Council of Europe Convention of 27 January 1977 on the Suppression of Terrorism does not regard terrorist offences as political offences or as offences connected with political offences or as offences inspired by political motives. The United Nations has adopted the Convention for the suppression of terrorist bombings of 15 December 1997 and the Convention for the suppression of financing terrorism of 9 December 1999. A draft global Convention against terrorism is currently being negotiated within the United Nations.

(4) At European Union level, on 3 December 1998 the Council adopted the Action Plan of the Council and the Commission on how best to implement the provisions of the Treaty of Amsterdam on an area of freedom, security and justice (3). Account should also be taken of the Council Conclusions of 20 September 2001 and of the Extraordinary European Council plan of action to combat terrorism of 21 September 2001. Terrorism was referred to in the conclusions of the Tampere European Council of 15 and 16 October 1999, and of the Santa María da Feira European Council of 19 and 20 June 2000. It was also mentioned in the Commission communication to the Council and the European Parliament on the biannual update of the scoreboard to review progress on the creation of an area of ‘freedom, security and justice’ in the European Union (second half of 2000).

Furthermore, on 5 September 2001 the European Parliament adopted a recommendation on the role of the European Union in combating terrorism. It should, moreover, be recalled that on 30 July 1996 twenty-five measures to fight against terrorism were advocated by the leading industrialised countries (G7) and Russia meeting in Paris.

(5) The European Union has adopted numerous specific measures having an impact on terrorism and organised crime, such as the Council Decision of 3 December 1998 instructing Europol to deal with crimes committed or likely to be committed in the course of terrorist activities against life, limb, personal freedom or property (4); Council Joint Action 96/610/JHA of 15 October 1996 concerning the creation and maintenance of a Directory of specialised counter-terrorist competences, skills and expertise to facilitate counter-terrorism cooperation between the Member States of the European Union (5); Council Joint Action 98/428/1HA of 29 June 1998 on the creation of a European Judicial Network (6), with responsibilities in terrorist offences, in particular Article 2; Council Joint Action 98/733/JHA of 21 December 1998 on making it a criminal offence to participate in a criminal organisation in the Member States of the European Union (7); and the Council Recommendation of 9 December 1999 on cooperation in combating the financing of terrorist groups (8).

(1) OJ C 26, 30.1.1999, p. 22.
The definition of terrorist offences should be approximated in all Member States, including those offences relating to terrorist groups. Furthermore, penalties and sanctions should be provided for natural and legal persons having committed or being liable for such offences, which reflect the seriousness of such offences.

Jurisdictional rules should be established to ensure that the terrorist offence may be effectively prosecuted.

Victims of terrorist offences are vulnerable, and therefore specific measures are necessary with regard to them.

Given that the objectives of the proposed action cannot be sufficiently achieved by the Member States unilaterally, and can therefore, because of the need for reciprocity, be better achieved at the level of the Union, the Union may adopt measures, in accordance with the principle of subsidiarity. In accordance with the principle of proportionality, this Framework Decision does not go beyond what is necessary in order to achieve those objectives.

This Framework Decision respects fundamental rights as guaranteed by the European Convention for the Protection of Human Rights and Fundamental Freedoms and as they emerge from the constitutional traditions common to the Member States as principles of Community law. The Union observes the principles recognised by Article 6(2) of the Treaty on European Union and reflected in the Charter of Fundamental Rights of the European Union, notably Chapter VI thereof. Nothing in this Framework Decision may be interpreted as being intended to reduce or restrict fundamental rights or freedoms such as the right to strike, freedom of assembly, of association or of expression, including the right of everyone to form and to join trade unions with others for the protection of his or her interests and the related right to demonstrate.

Actions by armed forces during periods of armed conflict, which are governed by international humanitarian law within the meaning of these terms under that law, and, inasmuch as they are governed by other rules of international law, actions by the armed forces of a State in the exercise of their official duties are not governed by this Framework Decision, their nature or context, may seriously damage a country or an international organisation where committed with the aim of:

- seriously intimidating a population, or
- unduly compelling a Government or international organisation to perform or abstain from performing any act, or
- seriously destabilising or destroying the fundamental political, constitutional, economic or social structures of a country or an international organisation,

shall be deemed to be terrorist offences:

(a) attacks upon a person's life which may cause death;
(b) attacks upon the physical integrity of a person;
(c) kidnapping or hostage taking;
(d) causing extensive destruction to a Government or public facility, a transport system, an infrastructure facility, including an information system, a fixed platform located on the continental shelf, a public place or private property likely to endanger human life or result in major economic loss;
(e) seizure of aircraft, ships or other means of public or goods transport;
(f) manufacture, possession, acquisition, transport, supply or use of weapons, explosives or of nuclear, biological or chemical weapons, as well as research into, and development of, biological and chemical weapons;
(g) release of dangerous substances, or causing fires, floods or explosions the effect of which is to endanger human life;
(h) interfering with or disrupting the supply of water, power or any other fundamental natural resource the effect of which is to endanger human life;
(i) threatening to commit any of the acts listed in (a) to (h).

2. This Framework Decision shall not have the effect of altering the obligation to respect fundamental rights and fundamental legal principles as enshrined in Article 6 of the Treaty on European Union.

Article 2

Offences relating to a terrorist group

1. For the purposes of this Framework Decision, 'terrorist group' shall mean: a structured group of more than two persons, established over a period of time and acting in concert to commit terrorist offences. 'Structured group' shall mean a group that is not randomly formed for the immediate commission of an offence and that does not need to have formally defined roles for its members, continuity of its membership or a developed structure.