



**COUNCIL OF
THE EUROPEAN UNION**

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COPEN 134**

NOTE

from : Presidency
to : Delegations

No. prev. doc. : 11457/09 DROIPEN 53 COPEN 120

Subject : Draft Resolution of the Council on a roadmap for strengthening procedural rights of suspected and accused persons in criminal proceedings

1. The Friends of the Presidency on 9 July held a general exchange of views and first examination of the "Roadmap on procedural rights" on the basis of doc. 11457/09.
2. Delegations very much welcomed the roadmap, subject to some refinements, and showed great enthusiasm for the step-by-step strategy suggested by the Presidency.
3. Further to questions raised by some delegations relating to the status of the introductory part, the Presidency decided to transform the text into a resolution. Delegations will find attached the text thus modified, also taking into account drafting suggestions presented at the meeting.
4. Delegations are invited to present comments on this text in writing before Monday 20 July, 12h00, to the attention of Steven Cras / Luca De Matteis at the Council General Secretariat (secretariat.criminal-law@consilium.europa.eu) and to Signe Öhman, Chair of the Working Party (signe.ohman@justice.ministry.se).

Draft

**Resolution of the Council on a roadmap for strengthening procedural rights of
suspected and accused persons in criminal proceedings**

The Council of the European Union,

Whereas:

- (1) In the European Union, the Convention for the Protection of Human Rights and Fundamental Freedoms (the "Convention") and its Protocols constitute the common basis for the protection of the rights of suspected and accused persons in criminal proceedings, including the pre-trial and the trial stage.
- (2) Furthermore, the Convention and its Protocols, as interpreted by the European Court of Human Rights, are an important foundation for Member States to have trust in each other's criminal justice systems. At the same time, there is room for further action of the European Union to ensure full implementation and respect of Convention standards, as well as, where appropriate, to raise existing standards and to ensure consistent application of the applicable standards.
- (3) The European Union has successfully established an area of freedom of movement and residence, which the citizens benefit from by increasingly traveling, studying and working in other countries than that of their residence. However, the removal of internal borders and the increasing exercise of the rights to freedom of movement and residence has as an inevitable consequence that cross-border criminality in the European Union is continually growing and that an increasing number of people are becoming involved in criminal proceedings in a Member State other than that of their residence. In those situations, the procedural rights of suspected and accused persons become particularly important in order to safeguard the right to a fair trial.

- (4) Indeed, whilst various measures have been taken at the European Union level to guarantee a high level of safety for citizens, there is an equal need to address specific problems that can arise when a person is the suspect or accused in criminal proceedings.
- (5) (deleted)
- (6) This calls for specific action on procedural rights, in order to ensure the fairness of the criminal proceedings. Such action, which can comprise legislation as well as other measures, will enhance citizens' confidence that the European Union and its Member States will protect and guarantee their rights.
- (7) The 1999 Tampere European Council concluded that in the context of implementing the principle of mutual recognition, work should also be launched on those aspects of procedural law on which common minimum standards are considered necessary in order to facilitate the application of the principle of mutual recognition, respecting the fundamental legal principles of Member States (Conclusion 37).
- (7a) Also, the 2004 Hague Programme states that further realisation of mutual recognition as the cornerstone of judicial cooperation implies the development of equivalent standards of procedural rights in criminal proceedings, based on studies of the existing level of safeguards in Member States and with due respect for their legal traditions (point 3.3.1.).
- (8) Mutual recognition presupposes that the competent authorities of the Member States trust the criminal justice systems of the other Member States. For the purpose of enhancing mutual trust within the European Union, it is important that there exist European Union standards for the protection of procedural rights which are properly implemented and applied in the Member States.

- (9) Recent studies show that there is wide support among experts for European Union action on procedural rights, through legislation and other measures, and that there is a need for enhanced mutual trust between the judicial authorities in the Member States¹. These sentiments are echoed by the European Parliament². In its communication for the Stockholm programme³, the European Commission observes that strengthening the rights of the defence is vital in order to maintain mutual trust between the Member States and public confidence in the European Union.
- (10) Discussions on procedural rights within the context of the European Union over the last few years have not led to any concrete results. However, a lot of progress has been made in the area of judicial and police cooperation on measures that facilitate prosecution. It is now time to take action to improve the balance between these measures and the protection of procedural rights of the individual. We must be able to guarantee our citizens safety and the rule of law, no matter where in the Union they decide to study, work or live.
- (11) Bearing in mind the importance and complexity of these issues, it seems appropriate to address them in a step-by-step-approach, whilst ensuring overall coherence. By addressing future actions one area at a time, focused attention can be paid to each individual measure, so as to enable problems to be identified and addressed in a way that will give added value to each measure.
- (12) Any new EU legislative acts in this field should be coherent and consistent with the minimum standards set out by the Convention and its Protocols, as interpreted by the European Court of Human Rights (“Strasbourg-proof”),

¹ See inter alia the "*Analysis of the future of mutual recognition in criminal matters in the European Union*", report of 20 November 2008 by the *Université Libre de Bruxelles*.

² See e.g. the "*European Parliament recommendation of 7 May 2009 to the Council on development of an EU criminal justice area*", 2009/2012(INI), point 1 a).

³ "*An area of freedom, security and justice serving the citizen*", COM (2009) 262/4 (point 4.2.2.).

Hereby adopts the following Resolution:

1. Action should be taken at the level of the European Union in order to strengthen the rights of suspected and accused persons in criminal proceedings. Such action can comprise legislation as well as other measures.
2. The Council endorses the "Roadmap on procedural rights", set out in the Annex to this Resolution, as the basis for future action. The rights included in this roadmap, which could be complemented by other rights, are considered to be fundamental procedural rights and action in respect of these rights should be given priority at this stage.
3. The Commission is invited to submit proposals regarding the measures set out in the roadmap, and to present the Green Paper mentioned under point F.
4. The Council will examine all proposals presented in the context of the roadmap and pledges to deal with them as matters of priority.
5. The Council will act in full cooperation with the European Parliament, in accordance with the applicable rules.

Roadmap for strengthening procedural rights of suspected and accused persons
in criminal proceedings

(the order of the rights indicated in this roadmap is indicative)

Measure A: Translation and Interpretation

Short explanation:

The suspect and accused must be able to understand what is happening and to make him/herself understood. A suspect or accused who does not speak or understand the language that is used in the proceedings will need an interpreter and translation of essential procedural documents. Particular attention should also be paid to the needs of suspects and defendants with hearing or speech impairments.

Measure B: Information on Rights and Information about the Charges

Short explanation:

The suspect or accused is likely to know very little about his/her rights. A person that is suspected or accused of a crime should get information on his/her basic rights in writing, e.g. by way of a letter of rights. Furthermore, that person should also be entitled to receive promptly information about the nature and cause of the accusation against him or her. The right to information should also include access to the file for the individual concerned, it being understood that this should not prejudice the due course of the criminal proceedings.

Measure C: Legal Aid and Legal Advice

Short explanation:

The right to legal advice (through a legal counsel) for the suspect or accused in criminal proceedings is fundamental in order to safeguard the fairness of the proceedings; the right to legal aid should ensure full equality of access to the aforementioned right to legal advice.

Measure D: Communication with Relatives, Employers and Consular Authorities

Short explanation:

When a person has been deprived of his/her liberty, his/her consular authorities, relatives and employer are to be informed of the deprivation of liberty.

Measure E: Special Safeguards for Vulnerable Persons

Short explanation:

It is important that special attention is shown to suspected and accused persons who cannot understand or follow the content or the meaning of the proceedings owing to their age, mental, physical or emotional condition in order to safeguard the fairness of the proceedings.

Measure F: A Green Paper on the Right to Review of the Grounds for Detention

Short explanation:

The time that a person can spend in detention before having his case tried in court varies a lot between the Member States. Long periods of detention are detrimental for the individual, can have a negative effect on the mutual trust and the judicial cooperation between the Member States and do not represent the values for which the European Union stands. The possibility of establishing a periodical review for the justification of continued detention should be examined.