



**COUNCIL OF
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NOTE

from : Presidency

to : Delegations

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

The Friends of the Presidency on 9 July 2009 proceeded to a general exchange of views and to a first examination of the "Roadmap for strengthening procedural rights of suspected or accused persons in criminal proceedings", on the basis of doc. 11457/09. Delegations very much welcomed the roadmap, subject to some refinements, and showed great enthusiasm for the step-by-step approach suggested by the Presidency.

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. On 13 July 2009, the Presidency invited delegations to present written observations on a new version of the text (doc. 11987/09). Various delegations, including CZ, DE, IE, IT, LV, NL and SI, replied to this invitation, for which the Presidency is most grateful.

Taking account of these written observations, the Presidency drafted a revised text, which is set out in the Annex.

Draft

**Resolution of the Council on a roadmap for strengthening procedural rights of
suspected or 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 or accused persons in criminal proceedings, which for the purposes of this resolution includes 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 and to strengthen such trust. 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 ensure consistent application of the applicable standards and to raise existing 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 have as an inevitable consequence 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 or 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) 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.
- (6) 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).
- (7) 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, complementary to the Convention, 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 States ¹. These sentiments are echoed by the European Parliament ². In its communication for the Stockholm programme ³, 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. Efforts should be deployed to strengthen procedural guarantees and the respect of the rule of law in criminal proceedings, no matter where citizens decide to travel, study, work or live in the European Union.
- (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, (...)

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 or accused persons in criminal proceedings. Such action can comprise legislation as well as other measures.
2. The Council endorses the "Roadmap for strengthening procedural rights of suspected or accused persons in criminal proceedings", 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 ¹.
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, and duly collaborate with the Council of Europe.

¹ Some Member States asked to delete the reference to the Green Paper mentioned under "F", relating to the right to review of the grounds for pre-trial detention. Other Member States, however, urged to maintain this item in the roadmap.

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

The order of the rights indicated in this roadmap is indicative. It is underlined that the explanations provided below merely serve to give an indication of the proposed action, and do not have as their objective to regulate the precise scope and content of the measures concerned in advance.

Measure A: Translation and Interpretation

Short explanation:

The suspected or accused person 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 or accused with physical impairments which affect their ability to speak or understand the language used in the proceedings.

Measure B: Information on Rights and Information about the Charges

Short explanation:

A person that is suspected or accused of a crime should get information on his/her basic rights orally and in writing, e.g. by way of a letter of rights. Furthermore, that person should also receive information promptly about the nature and cause of the accusation against him or her. A suspected or accused person should also be entitled to all the information necessary for the preparation of his or her defence, it being understood that this should not prejudice the due course of the criminal proceedings.

Measure C: Legal Advice and Legal Aid

Short explanation:

The right to legal advice (through a legal counsel) for the suspected or accused person in criminal proceedings at the earliest possible stage of such proceedings is fundamental in order to safeguard the fairness of the proceedings; the right to legal aid should ensure equality of access to the aforementioned right to legal advice.

Measure D: Communication with Relatives, Employers and Consular Authorities

Short explanation:

A suspected or accused person who is deprived of his or her liberty shall be promptly informed of the right to have at least one person, nominated by him or her, informed of the deprivation of liberty. In addition, a suspected or accused person who is deprived of his or her liberty in a State other than their own shall be informed of the right to have the consular authorities of their State informed of the deprivation of liberty.

Measure E: Special Safeguards for Vulnerable Persons¹

Short explanation:

In order to safeguard the fairness of the proceedings, it is important that special attention is shown to suspected or accused persons who cannot understand or follow the content or the meaning of the proceedings, owing e.g. to their age, mental or physical (...) condition.

¹ Some Member States suggested to incorporate the ‘special safeguards for vulnerable persons’ in the other measures, and to delete this item as a separate issue.

Measure F: A Green Paper on the Right to Review of the Grounds for Pre-Trial Detention¹

Short explanation:

The time that a person can spend in detention before being tried in court and during the court proceedings varies a lot between the Member States. Excessively 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.

(²)

¹ Some Member States asked to delete this measure relating to a Green Paper. Some other Member States, however, urged to maintain this measure in the roadmap.

² It was proposed by one delegation to add a measure relating to ‘presumption of innocence’, including the right to remain silent. Another delegation suggested adding a measure relating to ‘victims’.