



**COUNCIL OF
THE EUROPEAN UNION**

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NOTE

from :	Presidency
to :	Delegations
No Cion Prop :	11917/09 DROIPEN 60 COPEN 133 + ADD 1 + ADD 2
Subject:	Proposal for a Council Framework Decision on the right to interpretation and to translation in criminal proceedings

The Friends of the Presidency on 29/30 July 2009 proceeded to a general exchange of views and to a first examination of the above mentioned proposal, on the basis of doc. 11917/09.

Delegations generally welcomed the proposal, subject to refinements being made to the text.

All delegations have a general scrutiny reservation on the text. Some Member States also have a Parliamentary scrutiny reservation.

In view of the comments presented by delegations at the meeting, the Presidency has made a revised draft of the text, which is set out in the Annex.

COUNCIL FRAMEWORK DECISION
on the right to interpretation and to translation in criminal proceedings

THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty on European Union, and in particular Article 31(1)(c) thereof,

Having regard to the proposal from the Commission,

Having regard to the opinion of the European Parliament,

Whereas: ¹

- (1) The European Union has set itself the objective of maintaining and developing an area of freedom, security and justice. According to the conclusions of the European Council in Tampere of 15 and 16 October 1999, and in particular point 33 thereof, the principle of mutual recognition should become the cornerstone of judicial cooperation in both civil and criminal matters within the European Union.

- (2) On 29 November 2000 the Council, in accordance with the Tampere Conclusions, adopted a programme of measures to implement the principle of mutual recognition in criminal matters². The introduction to the programme of measures states that mutual recognition is "designed to strengthen cooperation between Member States but also to enhance the protection of individual rights".

¹ The recitals have not yet been discussed.

² OJ C 12, 15.1.2001, p. 10.

- (3) 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 extent of the mutual recognition exercise is very much dependent on a number of parameters, which include "mechanisms for safeguarding the rights of [...] suspects"¹ and common minimum standards necessary to facilitate the application of the principle of mutual recognition
- (4) Mutual recognition can only operate effectively in a spirit of confidence, whereby not only judicial authorities, but all actors in the criminal process see decisions of the judicial authorities of other Member States as equivalent to their own, implying "not only trust in the adequacy of one's partner's rules, but also trust that these rules are correctly applied"².
- (5) Although all Member States are parties to the European Convention for the Protection of Human Rights and Fundamental Freedoms (ECHR), experience has shown that this in itself does not always provide a sufficient degree of trust in the criminal justice systems of other Member States.
- (6) Article 31(1) of the Treaty on European Union provides for "ensuring compatibility in rules applicable in the Member States as may be necessary to improve [judicial co-operation in criminal matters]". Common minimum standards should lead to increased confidence in the criminal justice systems of all Member States which in turn should lead to more efficient judicial cooperation in a climate of mutual trust.
- (7) Such common standards should be applied in the fields of interpretation and translation in criminal proceedings. In order to enhance the necessary confidence among Member States, this Framework Decision provides for basic common standards with regard to interpretation and translation in criminal proceedings in the European Union which reflect the traditions of the Member States in applying the relevant provisions of the ECHR.

¹ OJ C 12, 15.1.2001, p. 10.

² COM(2000) 495, 26.7.2000, p. 4.

- (8) The right to interpretation and translation for those who do not understand the language of the proceedings are enshrined in Articles 5 and 6 of the ECHR, as interpreted by the case law of the European Court of Human Rights. The provisions of this Framework Decision facilitate the application of those rights in practice.
- (9) The provisions of this Framework Decision should ensure that the rights of the suspect who does not speak and understand the language of the proceedings to understand the accusations brought against him and to understand the proceedings in order to be able to exercise his rights are protected by providing free and accurate linguistic assistance. This assistance should be extended, if necessary, to relations between the suspect and his defence counsel.
- (10) Appropriate assistance should be provided also to suspects suffering from hearing or speech impediments.
- (11) The duty of care towards suspects unable to understand or follow the proceedings underpins a fair administration of justice. The prosecution, law enforcement and judicial authorities should therefore ensure that suspects in a potentially weak position are able to exercise effectively their rights. Those authorities should be aware of any potential vulnerability and take appropriate steps to ensure these rights. This should always be the case where a suspect is a minor or suffers from disabilities which impair his active participation in proceedings.
- (12) Member States should be under a duty to provide training to judges, lawyers and other relevant court personnel in order to ensure the quality of the interpretation and translation.
- (13) This Framework Decision respects the fundamental rights and observes the principles recognised by the Charter of Fundamental Rights of the European Union. In particular, this Framework Decision seeks to promote the right to liberty, the right to a fair trial and the rights of the defence.

- (14) Since the aim of achieving common minimum standards cannot be achieved by Member States acting unilaterally and can only be achieved at Union level, the Council may adopt measures in accordance with the principle of subsidiarity as referred to in Article 2 of the Treaty on European Union and defined in Article 5 of the Treaty establishing the European Community. In accordance with the principle of proportionality, as set out in the latter Article, this Framework Decision does not go beyond what is necessary in order to achieve that objective,

HAS ADOPTED THIS FRAMEWORK DECISION:

Article 1

Scope

1. This Framework Decision lays down rules concerning the rights to interpretation and translation in criminal proceedings and proceedings for the execution of a European Arrest Warrant.
2. Those rights apply to any person from the time that person is made aware by the competent authorities of a Member State, by official notification or otherwise, that he is suspected or accused of having committed a criminal offence until the conclusion of the proceedings (...).

Article 2

The right to interpretation

1. Member States shall ensure that a suspected or accused person who does not understand or speak the language of the criminal proceedings concerned, including persons with hearing or speech impediments, is provided with interpretation in his/her mother tongue or in another language that he/she understands, in order to safeguard the fairness of the criminal proceedings. Interpretation shall be provided during the criminal proceedings before investigative and judicial authorities, including during police questioning, (...) during all court hearings and during any necessary interim hearings.

2. Member States shall ensure that, where necessary, legal advice received in connection with (...) the criminal proceedings is interpreted for the suspected or accused person.
3. Member States shall ensure that all reasonable efforts are made to ascertain whether the suspect understands and speaks the language of the criminal proceedings.
4. Member States shall ensure that there is a possibility of review of a decision finding that there is no need for interpretation.
5. (...)
6. With regard to proceedings for the execution of a European Arrest Warrant, Member States shall ensure that any person subject to such proceedings who does not understand and speak the language of the proceedings, including persons with hearing or speech impediments, shall be provided with interpretation during those proceedings.

Article 3

The right to translation of essential documents

1. Member States shall ensure that a suspected or accused person who does not understand the language of the criminal proceedings concerned is provided with translations of all essential documents in order to safeguard the fairness of the criminal proceedings.
2. The competent authorities shall decide in each case which are the essential documents to be translated. The essential documents to be translated shall include at least the detention order depriving the person of his liberty, the charge/indictment (...) and the judgment.
3. The suspected or accused person, or his lawyer, may submit a reasoned request for translation of further documents, including written legal advice from the lawyer of the suspected or accused person.

4. Member States shall ensure that there is the possibility of (...) review of a decision to refuse translation of any documents referred to in paragraphs 2 and 3.
5. With regard to proceedings for the execution of a European Arrest Warrant, Member States shall ensure that any person subject to such proceedings who does not understand the language in which the European Arrest Warrant is drawn up, shall be provided with a translation of the said document.

Article 4

Member States to meet the costs of interpretation and translation

Member States shall cover the costs of interpretation and translation resulting from the application of Articles 2 and 3, irrespective of the outcome of the proceedings.

Article 5

Quality of the interpretation and translation

1. Member States shall ensure that the interpretation and translation provided shall be of such a quality that the suspected or accused person is fully able to exercise his or her rights.
2. Member States shall ensure that training is offered to judges, prosecutors and other relevant court personnel with a view to facilitating working with interpreters.

Article 6

Non-regression clause

Nothing in this Framework Decision shall be construed as limiting or derogating from any of the rights and procedural safeguards that may be ensured under the European Convention for the Protection of Human Rights and Fundamental Freedoms or the laws of any Member States which provide a higher level of protection.

Article 7
Implementation

Member States shall take the necessary measures to comply with the provisions of this Framework Decision by at the latest ¹.
By the same date Member States shall transmit to the Council and to the Commission the text of the provisions transposing into their national law the obligations imposed on them under this Framework Decision.

Article 8
Report

The Commission shall, by ², submit a report to the European Parliament and to the Council, assessing the extent to which the Member States have taken the necessary measures in order to comply with this Framework Decision, accompanied, if necessary, by legislative proposals.

Article 9
Entry into force

This Framework Decision shall enter into force on the twentieth day following that of its publication in the *Official Journal of the European Union*.
Done at Brussels,

For the Council
The President.

¹ 24 months after publication of this Framework Decision in the *Official Journal*.
² 36 months after publication of this Framework Decision in the *Official Journal*.