



**COUNCIL OF  
THE EUROPEAN UNION**

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### **OUTCOME OF PROCEEDINGS**

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Of : Meeting "Friends of Presidency"

On : 23 June 2010

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Subject: Initiative of the Kingdom of Belgium, the Federal Republic of Germany, the Republic of Estonia, the Kingdom of Spain, the French Republic, the Italian Republic, the Grand-Duchy of Luxembourg, the Republic of Hungary, the Republic of Austria, the Portuguese Republic, Romania, the Republic of Finland and the Kingdom of Sweden for a Directive of the European Parliament and of the Council on the rights to interpretation and to translation in criminal proceedings

- Suggestion for a Council Recommendation fostering the implementation by Member States of the rights to interpretation and to translation in criminal proceedings

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1. On 23 June 2010, the Friends of the Presidency had an exchange of views on the question whether it would be advisable that a non-binding instrument on "best practice" be adopted accompanying the draft Directive of the European Parliament and of the Council on the rights to interpretation and to translation in criminal proceedings.<sup>1</sup>

Although many delegations are still scrutinising this issue, the following provisional conclusions can be drawn:

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<sup>1</sup> The Institutions have recently reached agreement on the text of this draft Directive, see 10984/10. After revision of the text by jurists-linguists, the Directive will be formally adopted in the near future.

- a) Delegations generally have a positive approach towards establishing a non-binding instrument on best practice which would accompany the draft Directive. It was generally felt that such instrument could provide further added value in the field concerned;
- b) The instrument should have the legal form of a 'recommendation', as referred to in Articles 288 and 292 TFEU;
- c) The Council alone would be competent to adopt such a recommendation; there is no need to have the "*Governments of the Member States meeting within the Council*" supporting it as well; <sup>1</sup>
- d) Since recommendations are "typical" EU acts, the recommendation should be adopted either on a proposal from the Commission or, in this particular field, on the initiative of a quarter of the Member States (see Article 76, under b) TFEU). The Commission was invited to indicate on a short notice whether it intends to table a proposal for a recommendation. In case the Commission would not act, Member States could step in and table an initiative;
- e) The recommendation should preferably be adopted at the same time as the Directive;
- f) UK and IE are invited to continue their reflections whether they would like to "opt-in", once a proposal or an initiative for a recommendation will have been tabled. In case of opt-in and adoption, the recommendation would become "applicable" in the UK and IE;
- g) DK cannot take part in the adoption of the recommendation and it will thus not become "applicable" in DK;

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<sup>1</sup> As was done in respect of the resolution accompanying the draft Framework Decision on the right to interpretation and translation in criminal proceedings, see point h) below and doc. 14793/09.

- h) Delegations generally expressed a positive view on the text of the draft recommendation set out in the Annex. To be noted that this text follows as much as possible the text of the resolution that was unanimously agreed by the Council in October 2009 (14793/09), but which was never adopted. Where changes have been suggested these have been underlined. Some further explanations have been provided in footnotes.
2. Several Member States urged the Commission to keep the momentum regarding the work on the issue of procedural rights, and to table as soon as possible a proposal for an instrument relating to measure B (regarding the "right to information / letter of rights").
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**Possible text of a recommendation that could be proposed**

(DRAFT)

**Recommendation of the Council (...) fostering the implementation by Member States of the right to interpretation and to translation in criminal proceedings**

THE COUNCIL OF THE EUROPEAN UNION (...),

Having regard to the Treaty on the Functioning of the European Union and in particular to its Article 292, in conjunction with its Article 82(1)(c);

Having regard to the proposal of the Commission / initiative of [Member States]

Whereas:

Directive 2010/XXX/EU of the European Parliament and of the Council on the rights to interpretation and to translation in criminal proceedings sets out certain requirements regarding the rights, for persons suspected or accused of a criminal offence and for persons subject to proceedings for the execution of a European Arrest Warrant, who do not understand or speak the language of the proceedings, to be assisted by an interpreter and to receive translations of essential documents.

While fully respecting the national budgetary procedures, guidelines should be given to Member States with a view to promoting the effective implementation of these rights,

HAS ADOPTED THIS RECOMMENDATION:

### *Scope and objectives*

- (1) This Recommendation aims to foster the rights set out in Directive 2010/XXXX/EU of the European Parliament and of the Council on the rights to interpretation and to translation in criminal proceedings.
- (2) Building further on the principles laid down in the European Convention for the Protection of Human Rights and Fundamental Freedoms and in the EU Charter of Fundamental Rights<sup>3</sup>, Member States, while ensuring implementation of Directive 2010/XXXX/EU, are encouraged to promote actively the measures set out below.
- (3) The aim of the measures taken should be to develop suitable, effective practice in the Member States for interpretation and translation in the course of criminal proceedings. The measures set out below also apply to interpretation and translation provided by the executing Member State in proceedings for the execution of a European Arrest Warrant.

### *Measures*

#### *Representation of professionals*

- (4) Representatives of the interpreters' and translators' professions should be invited to be involved, where appropriate, in the practical implementation of the measures set out below, as well as in achieving the objectives of this Recommendation.

#### *Qualification*

- (5) Member States should strive for a high level of qualification for interpreters and translators employed in criminal proceedings for the purpose of having an adequate standard of interpretation and translation in order to ensure the fairness of proceedings. In addition to general language skills, these translators and interpreters should have specialist knowledge of legal terminology.

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<sup>3</sup> After the entry into force of the Lisbon Treaty, it seems appropriate to refer also to the EU Charter, as it has been done in the draft Directive.

- (6) Interpreters and translators should be encouraged to develop their professional skills through continuous training and professional development.
- (7) The qualification of interpreters and translators employed in criminal proceedings should be verified by a formal degree or any similar proof of proficiency, for example through accreditation or certification, in the language concerned.
- (8) Member States should strive for a high level of qualification for interpreters assisting suspected or accused persons with a hearing impediment.
- (9) It should be verified that interpreters and translators employed in criminal proceedings are persons of integrity.
- (10) (...) <sup>4</sup>

Keeping register(s) up to date

- (11) (...) <sup>5</sup>
- (12) When Member States have established a register or registers of independent interpreters and translators who are appropriately qualified, such register or registers should be kept up to date so as to reflect, *inter alia*, the status of the interpreter's or translator's qualifications, without prejudice to the application of rules on the protection of individuals with regard to the processing of personal data.

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<sup>4</sup> Point 10 on 'training' has been deleted, since it is now contained in the draft Directive, see Article 5a of the text in doc 10420/10.

<sup>5</sup> Point 11 on the 'establishment of registers' has been deleted since it basically duplicates the text of Article 5(2), first sentence, of the draft Directive (as in 10420/10). As a consequence, the beginning of point 12 has been slightly modified.

(13) (...) <sup>6</sup>

(14) (...) <sup>7</sup>

*Engagement of registered interpreters and translators*

(15) Member States should ensure that, insofar as possible, only registered interpreters and translators are employed in criminal proceedings. The services of a non-registered interpreter or translator should be used only if it is not reasonably possible to employ a registered interpreter or translator. In such cases, the competent authorities should pay particular attention to the quality of the interpretation or translation.

(16) (...) <sup>8</sup>

*Codes of Conduct and Guidelines on Best Practice*

(17) The adoption of Codes of Conduct, as well as Guidelines on Best Practice, for interpreters and translators, should be encouraged. These should include provisions on, *inter alia*, professional integrity and confidentiality.

(18) In order to ensure that the quality of the service provided in criminal proceedings by interpreters and translators keeps on improving, Member States should regularly exchange information about experiences and practices in this field. The Commission is invited to organise regular consultations among Member States and representatives of the professional bodies engaged in interpretation and translation, in order to facilitate the exchange of experiences outlined above.

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<sup>6</sup> Point 13 on ‘making registers available’ has been deleted since it basically duplicates the text of Article 5(2), second sentence, of the draft Directive (as in 10420/10).

<sup>7</sup> Point 14 on ‘e-justice’ has been deleted since it basically duplicates the text of recital 16a of the draft Directive (as in 10420/10).

<sup>8</sup> Point 16 on ‘remote interpretation’ has been deleted since it basically duplicates the text of Article 2(4a) of the draft Directive (as in 10420/10).