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Proposal for a

DIRECTIVE OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL

on the right to information in criminal proceedings

{SEC(2010) 907}
{SEC(2010) 908}

EXPLANATORY MEMORANDUM

1. INTRODUCTION

1. This proposal for a Directive of the European Parliament and the Council aims to set common minimum standards as regards the right to information in criminal proceedings throughout the European Union. The proposal is the second step in a series of measures in the Procedural Rights Roadmap, adopted in Council on 30 November 2009 inviting the Commission to put forward proposals on a "step by step" basis. This approach is now seen as a good way to build confidence and contribute to promoting and further enhancing mutual trust. This proposal should therefore be considered as part of a comprehensive package of legislation to be presented over the next few years which will provide a minimum set of procedural rights in criminal proceedings in the European Union.
2. The proposal seeks to improve the rights of suspects. Having common minimum standards in relation to these rights should facilitate the application of the principle of mutual recognition, thereby improving the functioning of judicial cooperation between Member States of the EU.
3. The first step, on the right to interpretation and translation, is a Directive adopted on 8 October 2010.
4. As regards the legal basis, the proposal is based on Article 82(2) of the Treaty on the Functioning of the European Union (TFEU). That Article provides that, *"[t]o the extent necessary to facilitate mutual recognition of judgments and judicial decisions and police and judicial cooperation in criminal matters having a cross-border dimension, the European Parliament and the Council may, by means of directives adopted in accordance with the ordinary legislative procedure, establish minimum rules. Such rules shall take into account the differences between the legal traditions and systems of the Member States.*

They shall concern:

(a) mutual admissibility of evidence between Member States;

(b) the rights of individuals in criminal procedure;

(c) the rights of victims of crime;

(d)[...]."

For mutual recognition to function well it is necessary to have mutual trust. A certain degree of compatibility is necessary to improve mutual trust and hence, cooperation.

5. Article 47 of the Charter of Fundamental Rights of the European Union (the Charter) provides for the right to a fair trial; Article 48 guarantees the rights of the defence and has the same meaning and scope as the rights guaranteed by Article 6(3) of the

ECHR¹. As regards the European Convention on Human Rights and Fundamental Freedoms (ECHR), the right to information about rights can be inferred from the case-law of the European Court of Human Rights (ECtHR) on Article 6 ECHR, which has stated that authorities should take a proactive approach to ensuring that persons facing a criminal charge are informed of their rights. The right to information about the charge, which stems from Article 6(3)(a) ECHR, is fundamental for a person facing a criminal charge who must know the charges against him so that he is in a position to prepare his defence. Articles 9(2) and 14(3) of the International Covenant on Civil and Political Rights (ICCPR)² contain very similar provisions.

6. In order to inform the proposal, the Commission carried out an Impact Assessment. The report on the Impact Assessment is available at http://ec.europa.eu/governance/impact/ia_carried_out/cia_2010_en.htm

2. BACKGROUND

7. Article 6(3) of the Treaty on European Union (TEU) provides that fundamental rights, as guaranteed by the ECHR and as they result from the constitutional traditions common to the Member States, shall constitute general principles of the Union's law. Article 6(1) TEU provides that the Union recognises the rights, freedoms and principles set out in the Charter of Fundamental Rights of the European Union of 7 December 2000, as adapted at Strasbourg, on 12 December 2007, which shall have the same legal value as the TFEU and TEU. The Charter applies to EU institutions and Member States when they are implementing Union law, such as in the field of judicial cooperation in criminal matters in the European Union.
8. The Presidency Conclusions of the Tampere European Council³ stated that mutual recognition should become the cornerstone of judicial cooperation, but make the point that mutual recognition "...and the necessary approximation of legislation would facilitate [...] the judicial protection of individual rights"⁴.
9. The Commission Communication to the Council and the European Parliament of 26 July 2000 on Mutual Recognition of Final Decisions in Criminal Matters⁵ stated that "it must [...] be ensured that the treatment of suspects and the rights of the defence would not only not suffer from the implementation of the principle [of mutual recognition] but that the safeguards would even be improved through the process".
10. This was endorsed in the Programme of Measures to Implement the Principle of Mutual Recognition of Decisions in Criminal Matters⁶, adopted by the Council and

¹ Explanation on Article 48, Explanations relating to the Charter of Fundamental Rights.

² 999 U.N.T.S. 171. The ICCPR is an international convention on civil and political rights opened for signature by resolution of the United Nations General Assembly on 16 December 1966 which has been ratified by, and is thus binding in international law on, all EU Member States.

³ 15 and 16 October 1999.

⁴ Conclusion 33.

⁵ COM(2000) 495, 29.7.2000.

⁶ OJ C 12, 15.1.2001, p. 10.

the Commission. It pointed out that “mutual recognition is very much dependent on a number of parameters which determine its effectiveness”.

11. These parameters include mechanisms for safeguarding the rights of suspects (parameter 3) and the definition of common minimum standards necessary to facilitate the application of the principle of mutual recognition (parameter 4). This proposal for a Directive is an embodiment of the stated aim of enhancing the protection of individual rights.
12. In 2004, the Commission put forward a comprehensive proposal⁷ for legislation covering the most important rights of defendants in criminal proceedings. This proposal was not adopted by Council.
13. On 30 November 2009, the Justice Council adopted a Roadmap for strengthening procedural rights of suspected or accused persons in criminal proceedings⁸ calling for the adoption of five measures covering the most basic procedural rights, based on a "step-by-step" approach and inviting the Commission to present the necessary proposals to this end. The Council recognised that to date, not enough had been done at the European level to safeguard fundamental rights of individuals in criminal proceedings. The full benefit of EU legislation in this area will only be felt once all measures have been transposed into legislation. The second measure in the Roadmap, concerns the right to information.
14. The Stockholm Programme, adopted by the European Council of 10-11 December 2009⁹, reaffirmed the importance of the rights of the individual in criminal proceedings as a fundamental value of the Union and an essential component of mutual trust between Member States and of public confidence in the EU. Protecting individuals' fundamental rights will also remove obstacles to free movement. The Stockholm Programme refers to the Roadmap as being an integral part of the multiannual programme and calls on the Commission to present appropriate proposals for its swift implementation.

3. THE RIGHT TO INFORMATION AS ESTABLISHED UNDER THE CHARTER AND THE ECHR

15. Article 6 of the Charter - Right to liberty and security – stipulates that:

"Everyone has the right to liberty and security of person."

Article 47 of the Charter - Right to an effective remedy and to a fair trial – provides that:

"(...) Everyone is entitled to a fair and public hearing within a reasonable time by an independent and impartial tribunal previously established by law. Everyone shall have the possibility of being advised, defended and represented."

⁷ COM(2004) 328, 28.4.2004.

⁸ OJ C295, 4.12.2009, p. 1.

⁹ European Council Conclusions, 10-11 December 2009.

(...)."

Article 48 of the Charter - Presumption of innocence and right of defence – stipulates that:

"2. Respect for the rights of the defence of anyone who has been charged shall be guaranteed."

Within its scope of application, the Charter guarantees and reflects the corresponding rights enshrined in the ECHR.

Article 5 ECHR – Right to liberty and security - stipulates that:

"(2) Everyone who is arrested shall be informed promptly, in a language which he understands, of the reasons for his arrest and of any charge against him."

(...)"

And Article 6 – Right to a fair trial – stipulates that:

"(3) Everyone charged with a criminal offence has the following minimum rights:

(a) to be informed promptly, in a language which he understands and in detail, of the nature and cause of the accusation against him;

(b) to have adequate time and facilities for the preparation of his defence

[...]"

16. A number of recent studies¹⁰ show that the way suspects are informed of their rights varies widely and that in the majority of cases information on rights is only provided orally, which decreases its effectiveness and makes it more difficult to monitor. The right to information is not explicitly mentioned in the ECHR. However, there is case-law that requires judicial authorities to take positive measures in order to ensure effective compliance with Article 6 ECHR such as the decisions in *Padalov*¹¹ and *Talat Tunc*¹² in which the ECtHR stated that authorities should adopt an active stance in informing the suspect about the right to free legal aid. In the case of *Panovits*,¹³ the ECtHR stated that authorities have a positive obligation to provide the suspect with information on the right to legal assistance and free legal aid if the conditions for it are fulfilled. It is not sufficient that this information is given in writing, for instance by a Letter of Rights, as was done by the authorities in the *Panovits* case. The ECtHR stresses that authorities have to take all reasonable steps to ensure that a suspect is fully aware of his rights.
17. Article 5(2) and Article 6(3)(a) ECHR impose an obligation on the judicial authorities to inform a suspect of the nature and cause of the accusation so as to

¹⁰ T Spronken, G Vermeulen et al, *EU Procedural Rights in Criminal Proceedings*, Antwerp 2009; E Cape, Z Namoradze et al, *Effective Criminal Defence in Europe*, Antwerp 2010.

¹¹ *Padalov v Bulgaria*, judgment of 10 August 2006, application n° 54784/00.

¹² *Talat Tunc v. Turkey*, judgment of 27 March 2007, application n° 32432/96.

¹³ *Panovits v. Cyprus*, judgment of 11 December 2008, application n° 4268/04 §s 72-73.

enable the suspect to understand the charges, to allow him to prepare his defence¹⁴ and to challenge the lawfulness of his detention¹⁵. Even though both articles are specific in the information they require, they are limited to factual information about the reasons for the arrest and the nature and cause of the accusation and the respective legal basis. The amount of information to be communicated to the accused depends on the nature and complexity of the case since Article 6(3)(b) provides that the person must be provided with "*adequate time and facilities*" to prepare his defence and this will vary according to the case¹⁶. It follows that the authorities can be required to take additional steps in order to ensure that the suspect effectively understood the information¹⁷. The ECtHR case-law shows that most problems of compliance arise with regard to the positive measures that should ensure a fair trial. It is not sufficient to make the information available, in the sense that the suspect could have asked for it. The duty to inform the suspect about the nature and cause of the accusation rests on the prosecuting authority and cannot be complied with passively by making information available without bringing it to the attention of the defence¹⁸. The ECHR does not give any indication as to how the information should be given. Even though the Court decided in *Kamasinski*¹⁹ that a suspect should in principle be provided with a written translation of the indictment if he does not understand the language, the Court accepted that oral explanations were sufficient in order to comply with Article 6 (3)(a).

18. In line with the mandate set out in the Procedural Rights Roadmap, this Directive lays down minimum requirements at EU level for the information of suspected and accused persons about their procedural rights and the case against them. It thus promotes the application of the Charter of Fundamental Rights, and in particular its Articles 6, 47 and 48 by building upon Articles 5 and 6 ECHR as interpreted by the ECtHR.

4. SPECIFIC PROVISIONS

Article 1 - Objective

19. This Article sets out the objective of the Directive as laying down rules concerning the rights of suspected and accused persons to information about their rights and information about the charge in criminal proceedings against them.

Article 2 – Scope

20. The Directive applies from the time that a 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

¹⁴ *Mattoccia v. Italy*, judgment of 25 July 2000, application n° 23969/94, § 60.

¹⁵ *Fox, Campbell and Hartley*, judgment of 30 August 1990, application n° A 182, § 40.

¹⁶ *Pélissier and Sassi v. France*, judgment of 25 March 1999, application n° 25444/94, § 54; *Mattoccia v. Italy*, judgment of 25 July 2000, application n° 23969/94, § 60 and 71.

¹⁷ *Brozicek v. Italy*, judgment of 19 December 1989, application n° 10964/84, §41; *Mattoccia v. Italy*, judgment of 25 July 2000, application n° 23969/94, § 65; *Vaudelle v. France*, judgment of 30 January 2000, application n° 35683/97, §59.

¹⁸ *Mattoccia v. Italy*, judgment of 25 July 2000, application n° 23969/94, § 65.

¹⁹ *Kamasinski v. Austria*, judgment of 19 December 1989, application n° 9783/82, § 79.

the proceedings (including any appeal). It does not, however, apply in proceedings conducted by administrative authorities in relation to the breach of competition legislation, whether national or European, unless the case is brought before a court having jurisdiction in criminal matters.

21. European Arrest Warrant²⁰ proceedings are explicitly covered. In this respect, the Directive makes applicable the procedural guarantees contained in Articles 47 and 48 of the Charter and Articles 5 and 6 ECHR to surrender proceedings based on a European Arrest Warrant.

Article 3 – The right to information about rights

22. This Article lays down the general principle that all suspected and accused persons in criminal proceedings should be informed about relevant procedural rights at the earliest possible moment in the proceedings. Such information should be given in simple and accessible language, orally or in writing.
23. Paragraph 2 of this Article sets out those minimum rights and Member States' obligations arising from the Charter, the ECHR, the ICCPR and applicable EU legislation, which are considered key to safeguarding the fairness of criminal proceedings at their outset.

Article 4 – The right to written information about rights on arrest

24. This Article specifies Member States' general duty to inform suspected or accused persons about their procedural rights in cases where such persons are deprived of their liberty by Member States' competent authorities in the course of the criminal proceedings on suspicion of having committed a criminal offence (e.g. through arrest by the police and being placed in pre-trial detention on the order of a judge). Member States are required to inform these persons of their relevant rights *in writing*. The European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT), has repeatedly stressed in its reports that, in its experience, the period immediately following deprivation of liberty is when the arrested person is considered to be most vulnerable in relation to risks of intimidation and physical ill-treatment. According to the CPT it is essential that a suspected or accused person is informed of his rights promptly, i.e. without delay after his arrest and in the most effective way which is by means of a form explaining the rights in a straightforward manner²¹ (Letter of Rights). In the light of recent ECtHR jurisprudence²², Member States' competent authorities are required to ensure that the arrested person has a broad understanding of the information contained in the Letter of Rights. The arrested person must be allowed to keep the Letter of Rights throughout the time of his detention.
25. The Letter of Rights should be drafted in language which is easily understood by a lay person without any knowledge of criminal procedure and should contain the

²⁰ Council Framework Decision of 13 June 2002 on the European arrest warrant and the surrender procedures between Member States (2002/584/JHA).

²¹ CPT, *The CPT standards – "Substantive" sections of the CPT's General Reports*, CPT/Inf/E (2002) 1 – Rev. 2009, pp11, 12.

²² *Panovits v. Cyprus*, judgment of 11 December 2008, application n° 4268/04, § 67.

information referred to in Article 3(2). To help Member States design such a Letter of Rights and to promote consistency in the written information throughout the European Union, Annex I to the Directive contains a model of the Letter of Rights which Member States may use. This model is indicative and may be subject to review in the context of the report on implementation to be presented by the European Commission pursuant to Article 12 of the Directive and also once all the Roadmap measures have come into force. The content of the model does not prejudice rights that currently apply in Member States.

26. The Letter of Rights has to be provided to the suspected or accused person in a language he understands. Police authorities are expected to keep language versions for all commonly spoken languages in their locality available in electronic form that can be printed as the need arises. When a given language version is not available, the suspected or accused person should be informed of their rights orally in a language they understand and the Letter of Rights should be given to them without undue delay (i.e. as soon as it becomes available after translation into the relevant language). For persons who are partially sighted or blind, or who cannot read, Member States must have a method of transmitting the information.

Article 5 – The right to written information about rights in European Arrest Warrant proceedings

27. Different rights apply to persons subject to a European Arrest Warrant (e.g. the right to a hearing). Member States should ensure that a specific version of the Letter of Rights exists for persons subject to those proceedings. Annex II to this Directive contains a model of the Letter of Rights which Member States may use. This model is indicative and may be subject to review in the context of the report on implementation to be presented by the European Commission pursuant to Article 12 of the Directive and also once all the Roadmap measures have come into force. The content of the model does not prejudice rights that currently apply in Member States.

Article 6 – The right to information about the charge

28. Once a person has been charged with a criminal offence, he should be given sufficient information promptly, in detail and in a language he understands, to enable him to prepare his defence, and to challenge pre-trial decisions if necessary. This is a requirement under the Charter and the ECHR. This Article sets out exactly what information must be given as a minimum requirement.

Article 7 - The right to access to the case-file

29. The most effective way to provide a suspected or accused person with detailed information about the charge in order to allow him adequately to prepare his defence at trial is to give him or his lawyer access to the case-file. Recent research²³ shows that in the large majority of Member States access to the case-file is already granted at some point in the criminal proceedings. The ECtHR has consistently ruled that, depending on the stage of criminal proceedings, Articles 5(4) and 6(3)(b) ECHR and the principle of equality of arms between the prosecution and the defence require

²³ T Spronken, G Vermeulen et al, *EU Procedural Rights in Criminal Proceedings*, Antwerp 2009; E Cape, Z Namoradze et al, *Effective Criminal Defence in Europe*, Antwerp 2010.

Member States to disclose to the defence all material evidence for or against the accused²⁴ and to provide the accused person's lawyer with access to relevant documents contained in the case-file²⁵.

30. Paragraph 1 provides that where a suspected or accused person is arrested in the course of criminal proceedings, access to those documents contained in the case-file which are relevant to the determination of the lawfulness of the detention by the competent judicial authority should be granted. This limited access to the case-file ensures the fairness of pre-trial proceedings concerning the lawfulness of arrest and detention. In considering what documents and information access is being granted to, Member States should pay particular attention to the protection of the effectiveness of Leniency Programmes that are used in investigations under criminal law into cartel behaviour.
31. Paragraph 2 requires Member States to grant access to the case-file to *all* accused persons whether or not they are in custody, where the criminal investigation is concluded. Access to certain documents in the case-file may be excluded by a competent judicial authority where access to those documents may lead to serious risk to the life of another person or may seriously harm the internal security of the Member State in which the proceedings are taking place. Such limitation of access to the file is only to be used in exceptional circumstances.
32. Access to the case-file should not be limited to a one-off inspection. If the accused person or his lawyer deems it necessary, further access should be granted. If a file is particularly voluminous or where the interests of justice so require it, the accused person should be provided with an index of the documents contained in the case-file to enable him to decide to which documents he wishes to be given access.

Article 8 - Verification and remedies

33. In order to ensure that a suspected or accused person receives all the information to which he is entitled, Member States should establish a procedure to ascertain whether the person has received the information. This can for example be a form for the person to sign confirming that he has received the information or a note in the custody record.

Article 9 - Training

34. The purpose of this Article is to ensure that Member States' police officers, prosecutors and judges receive the necessary training to discharge adequately their duties arising from Articles 3 to 8 of the Directive. In particular, it is imperative that these officials have the requisite detailed knowledge of the procedural rights of suspected and accused persons in order to provide relevant and practically effective information on these rights.

²⁴ *Edwards v. United Kingdom*, judgment of 16 December 1992, application n° 13071/87, § 36.

²⁵ *Garcia Alva v. Germany*, judgment of 13 February 2001, application n° 23541/94, § 47-55; *Schöps v. Germany*, judgment of 13 February 2001, application n° 251164/94, § 41-42; *Mooren v. Germany*, judgment of 9 July 2009, application n° 11364/03, § 121-124.

Article 10 - Non-regression clause

35. The purpose of this Article is to ensure that setting common minimum standards in accordance with this Directive does not have the effect of lowering standards in certain Member States and that the standards set in the ECHR are maintained. Member States remain entirely free to set standards higher than those agreed in this Directive.

Article 11 – Implementation

36. This Article requires that Member States must implement the Directive by x /xx/ 20xx and, by the same date, send the text of the provisions transposing it into national law to the Commission.

Article 12 – Report

37. 36 months after publication of the Directive in the *Official Journal of the European Union*, the Commission must 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 Directive, accompanied, if necessary, by legislative proposals.

Article 13 - Entry into force

38. This Article provides that the Directive will enter into force on the twentieth day following its publication in the *Official Journal of the European Union*.

Annex I

39. This Annex contains an indicative model of the Letter of Rights to be provided to a suspected or accused person on arrest pursuant to Article 4(1). The model Letter of Rights sets out an explanation in simple language of the immediately relevant minimum rights as listed in Article 3(2) of the Directive. Whilst there is no obligation on Member States to use the model, those that do will be presumed to have implemented Article 4 of the Directive. The model may be subject to review in the context of the report on implementation to be presented by the European Commission pursuant to Article 12 of the Directive and also once all the Roadmap measures have come into force. The content of this model does not prejudice rights that currently apply in Member States.

Annex II

40. This Annex contains an indicative model of the Letter of Rights to be provided to a person arrested on the basis of a European Arrest Warrant as required by Article 5. Whilst there is no obligation on Member States to use the model, those that do will be presumed to have implemented Article 5 of the Directive. The model may be subject to review in the context of the report on implementation to be presented by the European Commission pursuant to Article 12 of the Directive and also once all the Roadmap measures have been brought into effect. The content of this model does not prejudice rights that currently apply in Member States.

5. SUBSIDIARITY PRINCIPLE

41. The objective of the proposal cannot be sufficiently achieved by Member States alone, since there is still significant variance in the precise way and timing of the provision of information which leads to divergence of standards across the EU. As the aim of the proposal is to promote mutual trust only action taken by the EU will allow setting consistent common minimum standards that apply throughout the whole of the European Union. The proposal will approximate Member States' substantive procedural rules in respect of the transmission of information about rights and about the charge to persons suspected or accused of having committed a criminal offence in order to build mutual trust. The proposal therefore complies with the subsidiarity principle. The Commission proposes a solution which differs slightly from the preferred option described in the Impact Assessment, but has comparable impacts. The cost of EU-mandated action is as estimated for the initially preferred option, because Member States will only incur extra costs if they choose to exercise their discretion rather than use the indicative model proposed within a Letter of Rights.

6. PROPORTIONALITY PRINCIPLE

42. The proposal complies with the proportionality principle in that it does not go beyond the minimum required in order to achieve the stated objective at European level and what is necessary for that purpose.

Proposal for a

**DIRECTIVE .../.../EU OF THE EUROPEAN PARLIAMENT AND OF THE
COUNCIL**

on the right to information in criminal proceedings

THE EUROPEAN PARLIAMENT AND THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty on the Functioning of the European Union, and in particular Article 82(2) thereof,

Having regard to the proposal from the European Commission,

After transmission of the draft legislative act to the national Parliaments,

Having regard to the opinion of the European Economic and Social Committee¹,

Having regard to the opinion of the Committee of the Regions²,

Acting in accordance with the ordinary legislative procedure,

Whereas:

- (1) Article 47 of the Charter of Fundamental Rights of the European Union (the Charter), Article 6 of the European Convention for the Protection of Human Rights and Fundamental Freedoms (ECHR) and Article 14 of the International Covenant on Civil and Political Rights (ICCPR) enshrine the right to a fair trial. Article 48 of the Charter guarantees respect for the rights of the defence.
- (2) Article 6 of the Charter and Article 5 of the ECHR enshrine the rights to liberty and security, the limitations to which may not exceed those permitted by the ECHR in the wording of its Article 5 and inferred from the case-law of the European Court of Human Rights.
- (3) 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 Union, since enhanced mutual recognition of judicial decisions and judgments and the necessary approximation of legislation would facilitate cooperation between authorities and the judicial protection of individual rights.

¹ OJ C , , p. .

² OJ C , , p. .

- (4) On 29 November 2000 the Council, in accordance with the Tampere Conclusions, adopted a programme of measures to implement the principle of mutual recognition of decisions in criminal matters³. The introduction to the programme of measures states that mutual recognition is "designed to strengthen cooperation between Member States" and "to enhance the protection of individual rights".
- (5) 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 and common minimum standards necessary to facilitate the application of the principle of mutual recognition.
- (6) 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 partners' rules, but also trust that those rules are correctly applied.
- (7) Although Member States are parties to the ECHR and the ICCPR, 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.
- (8) Strengthening mutual trust requires detailed rules on the protection of the procedural rights and guarantees stemming from the Charter, the ECHR and the ICCPR. In the implementation of this Directive, Member States should not in any event fall below the standards set out in the Convention and the Charter as developed by the case-law of the Court of Justice of the European Union and the European Court of Human Rights.
- (9) Article 82(2) of the Treaty provides for the establishment of minimum rules applicable in the Member States so as to facilitate mutual recognition of judgments and judicial decisions and police and judicial cooperation in criminal matters having a cross-border dimension. Point (b) of Article 82(2) refers to "the rights of individuals in criminal procedure" as one of the areas in which minimum rules may be established.
- (10) Common minimum rules 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 and to the promotion of a fundamental rights culture in the European Union. They should also remove obstacles to free movement of citizens. Such common minimum rules should apply to information in criminal proceedings.
- (11) On 30 November 2009, the Council adopted the Roadmap for strengthening procedural rights of suspected and accused persons in criminal proceedings ("the Roadmap")⁴. Taking a step-by-step approach, the Roadmap calls for the adoption of measures regarding the right to translation and interpretation, the right to information on rights and information about the charges, the right to legal advice and legal aid, the

³ OJ C 12, 15.1.2001, p. 10.

⁴ OJ C 295, 4.12.2009, p. 1.

right to communication with relatives, employers and consular authorities, and regarding special safeguards for suspected or accused persons who are vulnerable. The Roadmap emphasises that the order of the rights is indicative only and thus implies that it may be changed according to priorities. It is designed to operate as a whole; only when all its component parts have been implemented will its benefits be felt in full.

- (12) In the Stockholm Programme, adopted on 11 December 2009⁵, the European Council welcomed the Roadmap and made it part of the Stockholm Programme (point 2.4.). The European Council underlined the non-exhaustive character of the Roadmap, by inviting the Commission to examine further aspects of minimum procedural rights for suspected and accused persons, and to assess whether other issues, for instance the presumption of innocence, need to be addressed, in order to promote better cooperation in this area.
- (13) The first measure on the Roadmap is a Directive of the European Parliament and of the Council on the rights to interpretation and to translation in criminal proceedings⁶.
- (14) This Directive relates to measure B of the Roadmap. It lays down common minimum standards to be applied in the field of information about rights and about the charge to be given to persons suspected or accused of having committed a criminal offence, with a view to enhancing mutual trust among Member States. The Directive promotes the application of the Charter, and in particular its Articles 6, 47 and 48 by building upon Articles 5 and 6 ECHR as interpreted by the European Court of Human Rights. In its Communication "Delivering an area of freedom, security and justice for Europe's citizens", the Action Plan Implementing the Stockholm Programme⁷, the Commission announced the presentation of a proposal on the right to information in 2010.
- (15) This Directive does not apply in proceedings conducted by administrative authorities in relation to the breach of competition legislation, whether national or European, unless the case is brought before a court having jurisdiction in criminal matters.
- (16) The right to information about rights (which is inferred from the case-law of the European Court of Human Rights) should be explicitly established by the Directive. This Directive thus offers protection beyond that currently provided by the ECHR. Information about the charge is a right enshrined in Articles 5 and 6 of the ECHR as interpreted by the European Court of Human Rights and Articles 9 and 14 of the ICCPR. The provisions of this Directive should facilitate the application of those rights in practice, with a view to safeguarding the right to fair proceedings.
- (17) The suspected or accused person should be able to know and understand what his rights are and be in a position to avail himself of those rights before any police questioning. He should be informed promptly and in a language he understands of the nature and cause of any accusation he faces and given information about immediately relevant rights.

⁵ OJ C 115, 4.5.2010.

⁶ Directive 2010/xxx/EU of the European Parliament and of the Council on the rights to interpretation and translation in criminal proceedings (8 October 2010).

⁷ COM(2010) 171, 20.4.2010.

- (18) Information about rights should be given to all suspected and accused persons promptly at the outset of criminal proceedings, be it orally or in writing. Information about rights to be given under this Directive should as a minimum requirement under this Directive include information on the right of access to a lawyer, the right to be informed of the charge and, where appropriate, to be given access to the case-file, the right to interpretation and translation for those who do not understand the language of the proceedings and the right to be brought promptly before a court if the suspected or accused person is arrested. This is without prejudice to information to be given on other procedural rights stemming from the Charter, the ECHR, the ICCPR and applicable EU legislation as interpreted by the relevant courts and tribunals.
- (19) Where a suspected or accused person is arrested, information about these immediately relevant procedural rights should be given by means of a written Letter of Rights drafted in an easily comprehensible manner so as to ensure that he has an actual understanding of his rights. To help Member States design such a Letter of Rights and to promote greater consistency between Member States, a model of the Letter of Rights, which Member States may use, is provided in Annex I to the Directive. This model is indicative and may be subject to review in the context of the report on implementation to be presented by the European Commission pursuant to Article 12 of the Directive and also once all the Roadmap measures have come into force. The actual letter based on this model should also include other relevant procedural rights that apply in Member States.
- (20) A person accused of having committed a criminal offence should be given all the information on the charge necessary to enable him to prepare his defence and to safeguard the fairness of the proceedings.
- (21) The most effective way of ensuring that a suspected or accused person has sufficient information about the charge is to allow him or his lawyer access to the case-file. This access may be restricted where it poses a serious risk to the life of another person or the internal security of the Member State.
- (22) Member States should have a mechanism to verify that the suspected or accused persons have received all the information about rights and about the charge to which they are entitled.
- (23) Adequate training on procedural rights of suspected and accused persons should be provided to the relevant officials in Member States.
- (24) In accordance with the United Nations Convention on the Rights of the Child, a child means every person below the age of 18 years. In all action relating to children, the child's best interests must be a primary consideration.
- (25) The rights provided for in this Directive should also apply, *mutatis mutandis*, to proceedings for the execution of a European Arrest Warrant according to the Council Framework 2002/584/JHA of 13 June 2002 on the European Arrest Warrant and the surrender procedures between Member States⁸. To help Member States design such a Letter of Rights and to promote greater coherence between Member States a model

⁸ OJ L 190 of 18.7.2002, p.1.

form of the Letter of Rights, which Member States may use, is provided in Annex 1 to the Directive. This model form is indicative and may be subject to review in the context of the report on implementation to be presented by the European Commission pursuant to Article 12 of the Directive and also once all the Roadmap measures have come into force.

- (26) The provisions of this Directive set minimum rules. Member States may extend the rights set out in this Directive in order to provide a higher level of protection in situations not explicitly dealt with in this Directive. The level of protection should never go below the standards provided by the ECHR, as interpreted in the case-law of the European Court of Human Rights.
- (27) This Directive respects fundamental rights and observes the principles recognised by the Charter. In particular, this Directive seeks to promote the right to liberty, the right to a fair trial, the rights of the defence and the rights of the child. It has to be implemented accordingly.
- (28) Member States should ensure that the provisions of this Directive, where they correspond to rights guaranteed by the ECHR are implemented consistently with those of the ECHR and as developed by the relevant case-law of the European Court of Human Rights.
- (29) Since the aim of achieving common minimum standards cannot be achieved by Member States acting unilaterally, either at national, regional or local level, and can only be achieved at Union level, the European Parliament and the Council may adopt measures in accordance with the principle of subsidiarity as referred to in Article 5 of the Treaty on European Union. In accordance with the principle of proportionality, as set out in the latter Article, this Directive does not go beyond what is necessary in order to achieve that objective.
- (30) [In accordance with Articles 1, 2, 3 and 4 of Protocol on the position of the United Kingdom and Ireland in respect of the Area of Freedom, Security and Justice, annexed to the Treaty on European Union and to the Treaty on the Functioning of the European Union, the United Kingdom and Ireland have notified their wish to participate in the adoption and application of this Directive] OR [without prejudice of Article 4 of Protocol on the position of the United Kingdom and Ireland in respect of the Area of Freedom, Security and Justice, annexed to the Treaty on European Union and to the Treaty on the Functioning of the European Union, the United Kingdom and Ireland will not participate in the adoption of this Directive and will not be bound by or be subject to its application]⁹
- (31) In accordance with Articles 1 and 2 of Protocol on the position of Denmark, annexed to the Treaty on European Union and to the Treaty on the Functioning of the European Union, Denmark is not taking part in the adoption of this Directive, and is therefore not bound by it or subject to its application,

⁹ The final wording of this recital in the Directive will depend on the actual position of the United Kingdom and Ireland taken in accordance with the provisions of protocol (No 21).

HAVE ADOPTED THIS DIRECTIVE:

Article 1
Objective

The Directive lays down rules concerning the right of suspected and accused persons to information about their rights and about the charge in criminal proceedings against them.

Article 2
Scope

1. This Directive applies from the time a 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, which is understood to mean the final determination of the question whether the suspected or accused person has committed the offence, including, where applicable, sentencing and the resolution of any appeal.
2. This Directive applies to proceedings for the execution of a European Arrest Warrant.

Article 3
The right to information about rights

1. Member States shall ensure that any person who is suspected or accused of having committed a criminal offence is provided promptly with information on his procedural rights in simple and accessible language.
2. The information referred to in paragraph 1 shall include as a minimum:
 - the right of access to a lawyer, where necessary free of charge,
 - the right to be informed of the charge and, where appropriate, to be given access to the case-file,
 - the right to interpretation and translation,
 - the right to be brought promptly before a court if the suspected or accused person is arrested.

Article 4
The right to written information about rights on arrest

1. Where a person is arrested by the competent authorities of a Member State in the course of criminal proceedings, he shall be promptly provided with information about his procedural rights in writing (Letter of Rights). He shall be given an opportunity to read the Letter of Rights and be allowed to keep it in his possession throughout the time he is deprived of his liberty.

2. The Letter of Rights shall be drafted in simple language and shall include at least that information referred to in Article 3(2). Annex I to this Directive contains an indicative model of such a Letter.
3. Member States shall ensure that, where the suspected or accused person does not speak or understand the language of the proceedings, he receives the Letter of Rights in a language he understands. Member States shall ensure that a mechanism is in place to convey the information to a suspected or accused person who is partially sighted or cannot read. Where the suspected or accused person is a child, the information contained in the Letter of Rights shall also be provided orally in a manner adapted to the child's age, level of maturity and intellectual and emotional capacities.
4. Where a Letter of Rights is not available in the appropriate language, the suspected or accused person shall be informed of his rights orally in a language he understands. A Letter of Rights in a language he understands shall then be given to him without undue delay.

Article 5

The right to written information about rights in European Arrest Warrant proceedings

Member States shall ensure that any person subject to proceedings for the execution of a European Arrest Warrant receives an appropriate Letter of Rights setting out the rights of that person as laid down in the Framework Decision 2002/584/JHA.. Annex II to this Directive contains an indicative model of such Letter.

Article 6

The right to information about the charge

1. Member States shall ensure that a suspected or accused person is provided with sufficient information about the charge to safeguard the fairness of the criminal proceedings.
2. The information required pursuant to paragraph 1 shall be delivered promptly and in detail and in a language that the suspected or accused person understands. In the case of a child, information about the charges shall be provided in a manner adapted to his age, level of maturity and intellectual and emotional capacities.
3. The information to be given shall include:
 - (a) a description of the circumstances in which the offence was committed, including the time, place and degree of participation in the offence by the suspected or accused person and
 - (b) the nature and legal classification of the offence.

Article 7
The right to access to the case-file

1. Where a suspected or accused person is arrested at any stage of the criminal proceedings, Member States shall ensure that he or his lawyer is granted access to those documents contained in the case-file which are relevant for the determination of the lawfulness of the arrest or detention.
2. Member States shall ensure that an accused person or his lawyer is granted access to the case-file once the investigation of the criminal offence is concluded. Access to certain documents contained in the case-file may be refused by a competent judicial authority where access to these documents may lead to serious risk to the life of another person or may seriously harm the internal security of the Member State in which the proceedings take place. Where it is in the interests of justice, the accused person or his lawyer may request an index of the documents contained in the case-file.
3. Access to the case-file shall be provided in good time to allow the suspected or accused person to prepare his defence or challenge pre-trial decisions. It shall be provided free of charge.

Article 8
Verification and remedies

1. Member States shall ensure that a procedure is in place to ascertain whether a suspected or accused person has received all information relevant to him in accordance with Articles 3 to 7.
2. Member States shall ensure that a suspected or accused person has an effective remedy in instances where he does not receive this information.
3. Where the notification of rights is made orally in accordance with Article 4(4), it shall be recorded in such a manner as to allow verification of the content of the notification.

Article 9
Training

Member States shall ensure that relevant officials in police and judicial authorities receive appropriate training in relation to the obligations laid down in Articles 3 to 8. Member States shall ensure in particular that relevant officials have sufficient knowledge of the rights of suspected and accused persons as referred to in Article 3 in order to safeguard appropriate transmission of information on these rights.

Article 10
Non-regression clause

Nothing in this Directive shall be construed as limiting or derogating from any of the rights and procedural safeguards that may be ensured under the ECHR, under the ICCPR and under

other relevant provisions of international law or under the laws of any Member States which provide a higher level of protection.

Article 11
Implementation

1. Member States shall adopt and publish the laws, regulations and administrative provisions necessary to comply with this Directive by ¹⁰ at the latest.
2. They shall communicate the text of those provisions and a correlation table between those provisions and this Directive to the Commission.
3. When Member States adopt these provisions they shall contain a reference to this Directive or be accompanied by such a reference on the occasion of their official publication. Member States shall determine how such reference is to be made.

Article 12
Report

The Commission shall, by ¹¹ 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 Directive, accompanied, if necessary, by legislative proposals.

Article 13
Entry into force

This Directive shall enter into force on the twentieth day following that of its publication in the *Official Journal of the European Union*.

Article 14

This Directive is addressed to the Member States.

Done at Brussels,

For the European Parliament
The President

For the Council
The President

¹⁰ 24 months after publication of this Directive in the *Official Journal*.

¹¹ 36 months after publication of this Directive in the *Official Journal*.

ANNEX I



Indicative¹ model Letter of Rights for suspected and accused persons on arrest:

If you are arrested by the police you have the following rights:

- A. to be informed of what offence you are suspected**
- B. to the assistance of a lawyer**
- C. to an interpreter and translation of documents, if you do not understand the language**
- D. to know for how long you can be detained**

You are entitled to keep this Letter of Rights with you during your detention.

A. Information on the suspicion

- You have the right to know why you are suspected of having committed a criminal offence immediately after deprivation of liberty, even if the police do not question you.
- You or your lawyer can ask to see the parts of the case-file relating to your arrest and detention or be informed about their content in detail.

B. Help of a lawyer

- You have the right to speak to a lawyer before the police start questioning you.

¹ To be complemented with other relevant procedural rights applicable in Member States.

- If you ask to speak to a lawyer, it does not make you look like you have done anything wrong.
- The police must help you to get in touch with a lawyer.
- The lawyer is independent from the police and will not reveal any information you give him without your consent.
- You have the right to speak with a lawyer in private, both at the police station and/or on the telephone.
- If you are not able to pay for a lawyer the police have to provide you with information about free or partially free legal assistance.

C. Help of an interpreter

- If you do not speak or understand the language, an interpreter will be called for you. The interpreter is independent from the police and will not reveal any information you give him without your consent.
- You can also ask for an interpreter to help you to talk to your lawyer.
- The help of an interpreter is free of charge.
- You have the right to receive a translation of any order by a judge allowing your arrest or keeping you in custody. You may also ask to have other essential documents in the investigation translated.

D. How long can you be deprived of your liberty?

- If you are not released, you must be brought before a judge within *² hours after you have been deprived of your liberty.
- The judge must then hear you and can decide whether you are to be kept in custody or released. You have the right to receive a translation of the judge's decision if he decides that you will remain in custody.
- You have the right to ask for your release at any time. Your lawyer can advise you on how to proceed.

² (...)

ANNEX II



Indicative¹ model Letter of Rights for persons arrested on the basis of a European Arrest Warrant:

If you are arrested by the police on the basis of a European Arrest Warrant you have the following rights:

- A. to know why you have been arrested**
- B. to the assistance of a lawyer**
- C. to an interpreter and translation of documents, if you do not understand the language**
- D. to be informed of your right to agree to surrender**
- E. to a hearing if you do not agree to surrender**
- F. to be released once the relevant deadline has passed**

You are entitled to keep this Letter of Rights with you during your detention.

A. Right to know what you are arrested for

– You have a right to know why you are sought by another country.

B. Help of a lawyer

– You have the right to see a lawyer. The police must help you to get in touch with a lawyer.

¹ To be complemented with other relevant procedural rights applicable in Member States.

- The lawyer is independent from the police and will not reveal any information you give him without your consent.
- You have the right to speak with a lawyer in private, both at the police station and/or on the telephone.
- If you are not able to pay for a lawyer the police have to provide you with information about free legal assistance.

C. Help of an interpreter

- If you do not speak or understand the language, an interpreter will be called for you. The interpreter is independent from the police and will not reveal any information you give him without your consent.
- You can also ask for an interpreter to help you to talk to your lawyer.
- The help of an interpreter is free of charge.
- You have the right to receive a translation of any order by a judge allowing your arrest or keeping you in custody. You may also ask to have other essential documents in the investigation translated.

D. Your right to agree to surrender

- You have the right to agree to being surrendered under a European Arrest Warrant. This should speed the procedure up.
- If you agree to be surrendered, it may be difficult to change this decision at a later stage. You should speak to a lawyer before deciding whether or not to agree to surrender.

E. Your right to a hearing

- If you do not consent to be sent to the Member State seeking you, you are entitled to go before a judge and to explain why you don't consent.

F. Right to be released once the relevant deadline has passed

- As a general rule you have to be surrendered within 10 days of a court giving a final decision that you should be surrendered. If you have not been surrendered after 10 days, the authorities normally

have to release you. However, there are some exceptions to this rule, so you should speak to a lawyer about this.