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Subject: Proposal for a Directive of the European Parliament and of the Council on the right to information in criminal proceedings:  
- State of play

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On 20 July 2010 the Commission presented to the European Parliament and to the Council a proposal for a Directive of the European Parliament and of the Council on the right to information in criminal proceedings.<sup>1</sup> This proposal refers to "measure B" of the Roadmap for strengthening procedural rights of suspected and accused persons in criminal proceedings (the Roadmap) approved by the JHA Council on 23 October 2009<sup>2</sup> and included in the Stockholm Programme (section 2.4.), as adopted by the European Council in December 2009.

UK and IE have decided to participate in the adoption of this proposal.

Discussions in the technical Working Party have been proceeding steadily, and on two occasions (24 September 2010 and 26 October 2010) the Presidency has turned for guidance to CATS in order to direct the way forward in the negotiations.

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<sup>1</sup> See doc. n. 12564/10 + ADD 1 + ADD 2 DROIPEN 83 COPEN 162 CODEC 727.

<sup>2</sup> See doc. n. 14552/1/09 REV 1 DROIPEN 125 COPEN 197.

The Presidency has noted an open and constructive attitude of all delegations, committed to advance further in the protection of the fundamental rights of persons suspected or accused in criminal proceedings. Delegations have shown the will to keep up the momentum on this subject matter after the final adoption, on 20 October 2010, of the Directive on the right to translation and interpretation in criminal proceedings<sup>1</sup>.

The Presidency would hereby like to present to Council the state of play on the negotiations on the draft Directive on the basis of the in-depth discussions in the Council's preparatory bodies.

On a number of issues the Presidency is glad to note a wide agreement among delegations. While further work has to be done in the Working Party to refine the text of certain Articles, there is already a large support for the principles provided for by such Articles. The following issues may be highlighted:

- the principle enshrined in Article 3 of the Directive, whereby the competent authorities should provide the suspected or accused person with basic information on fundamental procedural rights linked to the protection of the right to a fair trial, at least those listed in Article 3 (3) of the draft Directive. This information should be provided once these procedural rights may be exercised by the person concerned and in due time to allow him to effectively exercise them. The information should in principle be provided only once during the proceedings, it should not be reiterated unless otherwise required by the circumstances of the case or the specific rules laid down in national law.
- the principle provided for by Article 4 of the Directive, according to which a person who is placed under arrest or detention in the course of criminal proceedings should be provided in writing with a Letter of rights, containing basic information on his procedural rights immediately relevant to the situation of arrest or detention. This right to written information also applies to detention imposed in relation to the execution of a European arrest warrant.

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<sup>1</sup> OJ L 280, 26.10.2010, p.1.

- the principle provided for by Articles 6 (3) and 7 (3), according to which, when the accused person is presented or summoned before a court to answer on the merits of a criminal charge, he should be provided with detailed information about the offence he is accused of having committed and with generalized access to documents or materials which are in the possession of the competent authorities (save certain exceptions to necessary safeguard other relevant public interests), so that he may adequately prepare his defence.

On the other hand, there still are some key issues on which further reflection in the Council's preparatory bodies will be required. In particular, with relation to issues such as:

- the identification of the evidentiary materials and documents which should be the object of the right of access provided by Article 7, and the possibility to use in the text, as the original proposal does, the term "case-file" to designate the object of the right to access;
- the definition of a commonly acceptable timeframe situated before the trial phase of the criminal proceedings during which the rights referred to in Articles 6 and 7 should apply, at least to some extent.

Further efforts will have to be made in order to take into account the diversities in the legal systems and traditions of each Member State. In particular, the discussions in the Working Party and at the meeting of CATS on 26 October 2010 have shown the need to accommodate the different legal traditions of the Member States. With respect to these issues, it is not the intention of the Commission's proposal, neither of the Presidency, to go beyond the scope of the Directive and touch upon the structure of criminal proceedings as defined by the national laws of each Member State.

The Presidency therefore invites all delegations to continue participating actively in a common effort to find an adequate solution for these last outstanding issues and to proceed as rapidly as possible towards an agreement within the Council before the end of the year on a text of the Directive which could form the basis for further negotiations with the European Parliament.