

# Judicial cooperation in criminal matters: right to interpretation and to translation in criminal proceedings. Initiative Belgium, Germany, Estonia, Spain, France, Italy, Luxembourg, Hungary, Austria, Portugal, Romania, Finland and Sweden

2010/0801(COD) - 22/01/2010 - Legislative proposal

**PURPOSE:** to lay down rules concerning the rights to interpretation and to translation in criminal proceedings and proceedings for the execution of a European Arrest Warrant.

**PROPOSED ACT:** Initiative of Belgium, Germany, Estonia, Spain, France, Italy, Luxembourg, Hungary, Austria, Portugal, Romania, Finland and Sweden for a Directive of the European Parliament and of the Council.

**BACKGROUND:** 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 matters. 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.

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. 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. Such common minimum rules should be applied in the fields of interpretation and translation in criminal proceedings.

**IMPACT ASSESSMENT:** in view of the step-by-step approach set out in the Roadmap, the Commission presented on 8 July 2009 a [proposal for a Council Framework Decision](#) on the right to interpretation and to translation in criminal proceedings. This proposal was accompanied by an Impact Assessment.

This impact assessment is re-submitted as "detailed statement" allowing to appraise compliance with the principles of subsidiarity and proportionality in accordance with the Lisbon Treaty, in view of the presentation by Member States of an initiative for a Directive of the European Parliament and of the Council on the rights to interpretation and to translation in criminal proceedings.

Five options are set out as follows:

- *Option 1: status quo;*
- *Option 2: adoption of non-legislative measures (such as recommendations) to exchange best practices and to establish Community guidelines;*

- *Option 3: new instrument covering all rights;*
- *Option 4: legislative measures restricted to the cross-border cases;*
- *Option 5: step-by-step approach beginning with legislative measures on access to interpretation and translation services (withdrawing the current proposal for a Framework Decision and proposing a new Framework Decision requiring Member States to provide minimum standards only for access to interpretation and translation services).*

**Option 5** could provide scope for a longer term action plan for the progressive approximation of laws in the area of procedural rights taking account of practical aspects either. This approach would not be as dependent on the Lisbon Treaty as option 3. This option would result in an improvement in the quality and provision of interpretation and translation in criminal proceedings. It would ensure a fairer trial in cases where the suspect does not understand the criminal proceedings, his rights or the full charges before him. The option would place an additional financial and administrative burden on Member States that currently do not offer training to legal interpreters and translators.

**CONTENT:** the proposal lays down rules concerning the rights to interpretation and to translation in criminal proceedings and proceedings for the execution of a European Arrest Warrant (EAW). Those rights apply to any person from the time that person is made aware by the competent authorities of a Member State 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. The Directive will not apply to proceedings which may lead to sanctions being imposed by an authority other than a criminal court, as long as those proceedings are not pending before a court having jurisdiction in criminal matters.

**Right to interpretation:** a suspected or accused person who does not understand or speak the language of the criminal proceedings concerned must be provided with interpretation into his native language or into another language that he understands, in order to safeguard his right to fair proceedings. Interpretation, including of communications between the suspected or accused person and his legal counsel, shall be provided during criminal proceedings before investigative and judicial authorities, including during police questioning, during all court hearings and during any necessary interim hearings, and may be provided in other situations. This provision will not affect rules of national law concerning the presence of a legal counsel during any stage of the criminal proceedings. A person with a hearing impediment must receive interpretation assistance, if appropriate for that person.

Member States must ensure that it is verified in any appropriate manner, including by consulting the suspected or accused person, whether he understands and speaks the language of the criminal proceedings and needs the assistance of an interpreter. At some stage in the proceedings, in accordance with national law, there must be the possibility of a review of a finding that there is no need for interpretation. Such review does not entail the obligation for Member States to provide for a separate mechanism in which the sole ground for review is the challenging of such finding. In proceedings for the execution of a EAW, the executing Member State shall ensure that its competent authorities provide any person subject to such proceedings who does not understand or speak the language of the proceedings, with interpretation.

**Right to translation of essential documents:** a suspected or accused person who does not understand the language of the criminal proceedings concerned must be provided with a translation, into his native language or into another language that he understands, of all documents which are essential in order to safeguard his right to fair proceedings, or at least the important passages of such documents, provided that the person concerned has the right of access to the documents concerned under national law. The competent authorities must decide which the essential documents to be translated are. The latter must include at least detention orders or equivalent decisions depriving the person of his liberty, the charge or indictment and any judgment, where such documents exist. The suspected person may submit a reasoned

request for translation of further documents which are necessary for the effective exercise of the right of defence.

There must be the possibility of a review if translation of a document referred to above is not provided. Such review does not entail the obligation for Member States to provide for a separate mechanism in which the sole ground for review is the challenging of such finding.

In proceedings for the execution of an EAW, the executing Member State shall ensure that its competent authorities provide any person subject to such proceedings who does not understand the language in which the European Arrest Warrant is drawn up, or into which it has been translated by the issuing Member State, with a translation of that document. Provided that this does not affect the fairness of the proceedings, an oral translation or an oral summary of the documents may be provided instead of a written translation. A person who has a right to translation of documents may, at any time, waive this right.

**Costs:** Member States shall cover the costs of interpretation and translation resulting from the application of the above provisions, irrespective of the outcome of the proceedings.

**Quality of the interpretation and translation:** concrete measures must be taken to ensure that the interpretation and translation provided shall be of adequate quality so that the suspected or accused person, as well as a person subject to the execution of a EAW, is fully able to exercise his rights.

**Non-regression clause:** it should be ensured 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 or other relevant international agreements are maintained. Member States remain entirely at liberty to set standards higher than those agreed in this Directive.