

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

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PURPOSE: explanatory memorandum relating to the initiative by a group of Member States for a Directive of the European Parliament and of the Council on the rights to interpretation and to translation in criminal proceedings.

CONTENT: Article 82(1) of the Treaty on the Functioning of the European Union provides that judicial cooperation in criminal matters in the European Union shall be based on the principle of mutual recognition of judgments and judicial decisions. For the purpose of enhancing mutual trust within the EU, it is important that, complementary to the Charter of Fundamental Rights and the European Court of Human Rights, there exist EU standards for the protection of procedural rights which are properly implemented and applied in the Member States.

There is wide support among experts for EU action on procedural rights, through legislation and other measures. These sentiments are echoed by the European Parliament (see [INI/2009/2012](#)) and by the European Commission ([COM\(2009\)0262](#)). In April 2004 the Commission presented a proposal for a Framework Decision on certain procedural rights in criminal proceedings throughout the EU ([COM\(2004\)0328](#)). After 3 years of discussion, it appeared however impossible to reach (unanimous) agreement on the text.

Subsequently, **other avenues were explored with a view to reaching the objectives set out by that proposal**, which aimed at enhancing procedural rights of suspected and accused persons in criminal proceedings. In this light:

- the Swedish Presidency presented in 2009 a proposal for a Roadmap for strengthening procedural rights of suspected or accused persons in criminal proceedings. The Roadmap was very much welcomed by Member States, was soon transformed into a Resolution of the Council and adopted by on 30 November 2009. In the Roadmap, the Council agrees that action needs to be taken at the level of the EU in order to strengthen the rights of suspected or accused persons in criminal proceedings. The Roadmap enumerates six measures as the basis for future action. One of these measures is the right to translation and interpretation in criminal proceedings.
- 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;
- on 15 July 2009, the Swedish Presidency presented a proposal for a Resolution of the Council and of the Representatives of the Governments of the Member States meeting within the Council fostering the implementation by Member States of the right to interpretation and to translation in

criminal proceedings. This Resolution aimed at accompanying and complementing the proposal for a Framework Decision presented by the Commission;

- after intense negotiations, the Council reached on 23 October 2009 a general approach regarding both the proposal for a Council Framework Decision on the right to interpretation and to translation in criminal proceedings and the accompanying Resolution.

Due to the entry into force of the Lisbon Treaty on 1 December 2009, **the proposal for a Framework Decision needs to be transformed into a proposal for a Directive** in order to allow continuation of the work to be carried out on the text. Since the Commission which is in place until 1 February 2010 has only a care-taker task and can, in principle, not adopt new proposals, it is felt appropriate that a group of **Member States presents the text of the general approach** on the proposal for a Council Framework Decision as an initiative for a Directive of the European Parliament and of the Council. Such initiative, taken in accordance with Article 76(b) TFEU, will allow:

- the work to continue under the Lisbon Treaty where it ended under the Amsterdam/Nice Treaties;
- no time to be wasted so that the EU citizens can as soon as possible benefit from the rights set out in the new instrument to be adopted by the European Parliament and by the Council in the context of the ordinary legislative procedure (former co decision procedure).

The Impact Assessment carried out by the Commission in relation to its proposal for a Council Framework Decision is equally valid for the initiative for a Directive, since it covers exactly the same subject matter. Since the proposal for a Framework Decision is replaced by the initiative for a Directive, the said Resolution can only be (formally) adopted when the Directive is adopted.