Judicial cooperation in criminal matters: right to information in criminal proceedings

2010/0215(COD) - 20/07/2010 - Legislative proposal

PURPOSE: to set common minimum standards as regards the right to information in criminal proceedings throughout the European Union.

PROPOSED ACT: Directive of the European Parliament and of the Council.

BACKGROUND: this 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. It 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. The first step, on the right to interpretation and translation, is a Directive adopted on 8 October 2010.

IMPACT ASSESSMENT: no impact assessment was carried out.

LEGAL BASE: Article 82(2) of the Treaty on the Functioning of the European Union (TFEU).

CONTENT: this 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. The main points are as follows:

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.

Scope: 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 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.

European Arrest Warrant 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.

Right to information about rights: the proposal 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. The proposal also 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.

Right to written information about rights on arrest: the draft directive 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 manner (Letter of Rights). In the light of recent European Court of Human Rights jurisprudence, 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.

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 information referred to in the draft directive. To promote consistency in the written information throughout the EU, 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 Commission 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. 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.

The right to written information about rights in European Arrest Warrant proceedings: 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 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. The content of the model does not prejudice rights that currently apply in Member States.

The right to information about the charge: 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. The text sets out exactly what information must be given as a minimum requirement.

The right to access to the case-file: 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 research 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, Member States are required to disclose to the defence all material evidence for or against the accused and to provide the accused person's lawyer with access to relevant documents contained in the case-file.

The draft directive 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.

The text 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. 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.

Verification and remedies: 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 be a form for the person to sign confirming that he has received the information or a note in the custody record.

Training: Member States' police officers, prosecutors and judges should receive the necessary training to discharge adequately their duties arising from 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.

Non-regression clause: the aim is to ensure that setting common minimum standards in accordance with the 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 the Directive.

Report: this must be submitted by the Commission 36 months after publication of the Directive.

Annex I: this Annex contains an indicative model of the Letter of Rights to be provided to a suspected or accused person on arrest. The model Letter of Rights sets out an explanation in simple language of the immediately relevant minimum rights as listed in the Directive. Whilst there is no obligation on Member States to use the model, those that do will be presumed to have implemented the relevant article 4 of the Directive.

Annex II: 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. Whilst there is no obligation on Member States to use the model, those that do will be presumed to have implemented the relevant article of the Directive.

BUDGETARY IMPLICATIONS: this proposal has no implications for the EU budget.