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) - 20/10/2010 - Final act

PURPOSE: to lay down common minimum rules to be applied in the fields of interpretation and translation in criminal proceedings for the execution of a European arrest warrant.

LEGISLATIVE ACT: Directive 2010/64/UE of the European Parliament and of the Council on the right to interpretation and translation in criminal proceedings.

CONTENT: this Directive lays down common minimum rules to be applied in the fields of interpretation and translation in criminal proceedings for the execution of a European arrest warrant.

Its main provisions may be summarised as follows:

Scope: the right referred to interpretation and translation shall apply to persons from the time that they are made aware by the competent authorities of a Member State, by official notification or otherwise, that they are suspected or accused of having committed a criminal offence until the conclusion of the proceedings.

Where the law of a Member State provides for the imposition of a sanction regarding minor offences by an authority other than a court having jurisdiction in criminal matters, and the imposition of such a sanction may be appealed to such a court, this Directive shall apply only to the proceedings before that court following such an appeal.

This Directive does not affect national law concerning the presence of legal counsel during any stage of the criminal proceedings, nor does it affect national law concerning the right of access of a suspected or accused person to documents in criminal proceedings.

Right to interpretation: Member States shall ensure that suspected or accused persons who do not speak or understand the language of the criminal proceedings concerned **are provided,without delay, with interpretation** during criminal proceedings before investigative and judicial authorities, including during police questioning, all court hearings and any necessary interim hearings.

The right to interpretation includes appropriate assistance for persons with hearing or speech impediments.

Interpretation shall be of a **quality sufficient to safeguard the fairness of the proceedings**, in particular by ensuring that suspected or accused persons have knowledge of the case against them and are able to exercise their right of defence. Suspected or accused persons have the right to challenge a decision finding that there is no need for interpretation and, when interpretation has been provided, the possibility to complain that the quality of the interpretation is not sufficient to safeguard the fairness of the proceedings.

Where appropriate, technology such as **videoconferencing, telephone or the Internet** may be used, unless the physical presence of the interpreter is required in order to safeguard the fairness of the proceedings.

The provisions also apply in procedures relating to the execution of a European arrest warrant.

Right to translation of essential documents: Member States shall ensure that suspected or accused persons who do not understand the language of the criminal proceedings concerned are, within a reasonable period of time, provided with a **written translation of all documents which are essential** to ensure that they are able to exercise their right of defence. Essential documents shall include any decision depriving a person of his liberty, any charge or indictment, and any judgment. The competent authorities shall, **in any given case**, decide whether any other document is essential. There shall be no requirement to translate passages of essential documents which are not relevant for the purposes of enabling suspected or accused persons to have knowledge of the case against them.

As in the case of interpretation, Member States must ensure that translation shall be of a **quality sufficient** to safeguard the fairness of the proceedings, and suspected or accused persons have the right **to challenge a decision finding that there is no need for the translation of documents** or passages thereof or to complain that the quality of the translation is not sufficient to safeguard the fairness of the proceedings. **An oral translation** or oral summary of essential documents may be provided instead of a written translation on condition that such oral translation or oral summary does not prejudice the fairness of the proceedings. Any waiver of the right to translation of documents shall be subject to the requirements that suspected or accused persons have received prior legal advice or have otherwise obtained full knowledge of the consequences of such a waiver, and that the waiver was unequivocal and given voluntarily.

In proceedings for the execution of a European arrest warrant, a written translation of that document must be provided.

Costs of interpretation and translation: Member States shall meet the costs of interpretation and translation resulting from the application of the Directive, irrespective of the outcome of the proceedings.

Quality of the interpretation and translation: in order to promote the adequacy of interpretation and translation and efficient access thereto, Member States shall endeavour to establish a register or registers of independent translators and interpreters who are appropriately qualified. Once established, such register or registers shall, where appropriate, be made available to legal counsel and relevant authorities. Interpreters and translators will be required to observe confidentiality regarding interpretation and translation.

Training: Member States shall request those responsible for the training of judges, prosecutors and judicial staff involved in criminal proceedings to pay special attention to the particularities of communicating with the assistance of an interpreter so as to ensure efficient and effective communication.

Record-keeping: Member States shall ensure that when a suspected or accused person has been subject to questioning or hearings by an investigative or judicial authority with the assistance of an interpreter, when an oral translation or oral summary of essential documents has been provided in the presence of such an authority, or when a person has waived the right to translation, it will be noted that these events have occurred.

Non-regression clause: nothing in this Directive shall be construed as limiting or derogating from any of the rights and procedural safeguards that are ensured under the European Convention for the Protection of Human Rights and Fundamental Freedoms (ECHR), the Charter of Fundamental Rights of the European Union, other relevant provisions of international law or the law of any Member State which provides a

higher level of protection. In this context, and with a view to strengthening, within the EU, the minimum standards in regard to the right to a fair trial, the Member States should be able to extend the rights in order to provide a higher level of protection also in situations not explicitly dealt with in this Directive. The level of protection should never fall below the standards provided by the ECHR or the Charter.

Report: the Commission shall, by 27 October 2014, 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.

Territorial provisions: the United Kingdom and Ireland have decided to participate in the adoption and application of this Directive, unlike Denmark which has not and which is therefore not bound by it or subject to its application.

ENTRY INTO FORCE: 15/10/2010.

TRANSPOSITION: 27/10/2013.