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REPORT

From:	Presidency
To:	Council
No. Prop.:	PE CONS 1/10 + 5673/10 + 5674/10 + 5676/10
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Subject:	Initiative of the Kingdom of Belgium, the Federal Republic of Germany, the Republic of Estonia, the Kingdom of Spain, the French Republic, the Italian Republic, the Grand-Duchy of Luxembourg, the Republic of Hungary, the Republic of Austria, the Portuguese Republic, Romania, the Republic of Finland and the Kingdom of Sweden for a Directive of the European Parliament and of the Council on the rights to interpretation and to translation in criminal proceedings - Information by the Presidency on negotiations with the European Parliament and the Commission

1. Further to the submission by Member States of the above initiative in December 2009, the LIBE Committee of the European Parliament adopted draft amendments to this initiative during an orientation vote held on 8 April 2010.
2. Subsequently, the Presidency, acting on behalf of the Council, entered into negotiations with representatives of the European Parliament and of the Commission with a view to reaching an agreement on the text in first reading.
3. At the trilogue on 17/18 May 2010, a provisional agreement was reached.

4. COREPER on 27 May 2010 confirmed that the text as provisionally agreed by the negotiating parties was acceptable to the Council, on condition that the period for implementation of the Directive, as referred to in Article 7(1), were to be extended to 36 months. As a consequence, the period mentioned in Article 8 was put at 48 months. ¹
5. The text of the agreement as thus finalised is set out in the Annex to this report.
6. In a letter dated 27 May 2010, the President of COREPER informed the President of the LIBE Committee that "*should the plenary of the European Parliament adopt at first reading amendments to the initiative which would result in exactly the same text as that of the attached agreement, the Council would, in accordance with Article 294, paragraph 4, of the Treaty on the Functioning of the European Union, adopt the Directive in the wording which corresponds to the position of the European Parliament, subject to the usual revision of the text by legal-linguists.*"
7. It is intended that the LIBE Committee of the European Parliament will adopt the amendments on 10 June 2010, and that the plenary of the European Parliament will adopt the amendments during its session on 14-17 June 2010.
8. After the usual legal-linguist revision of the text, the Directive should be formally adopted at a future Council session.

¹ The European Parliament's rapporteur has been advised of this. Political agreement will be sought in conjunction with the vote in the LIBE Committee.

(Draft)

DIRECTIVE 2010/.../EU
OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL
of
on the rights to interpretation and to translation in criminal proceedings

THE EUROPEAN PARLIAMENT AND THE COUNCIL OF THE EUROPEAN UNION,
Having regard to the Treaty on the Functioning of the European Union, and in particular
Article 82(2)(b) thereof,

(...)

Having regard to the initiative of the Kingdom of Belgium, the Federal Republic of Germany, the
Republic of Estonia, the Kingdom of Spain, the French Republic, the Italian Republic, the
Grand-Duchy of Luxembourg, the Republic of Hungary, the Republic of Austria, the Portuguese
Republic, Romania, the Republic of Finland and the Kingdom of Sweden,

After transmission of the draft legislative act to the national parliaments,

Acting in accordance with the ordinary legislative procedure ²,

² Opinion ... (not yet published in the Official Journal).

Whereas:

- (1) The European Union has set itself the objective of maintaining and developing an area of freedom, security and justice. According to the conclusions of the European Council in Tampere of 15 and 16 October 1999, and in particular point 33 thereof, the principle of mutual recognition should become the cornerstone of judicial co-operation in both civil and criminal matters within the Union, *since enhanced mutual recognition of judicial decisions and judgments and the necessary approximation of legislation would facilitate co-operation between authorities and the judicial protection of individual rights.* [reply to AM. 1]
- (2) 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 matters³. The introduction to the programme of measures states that mutual recognition is "designed to strengthen cooperation between Member States but also to enhance the protection of individual rights".
- (3) Implementation of the principle of mutual recognition of decisions in criminal matters presupposes that Member States have trust in each other's criminal justice systems. The extent of the mutual recognition exercise is very much dependent on a number of parameters, which include mechanisms for safeguarding the rights of suspects and common minimum standards necessary to facilitate the application of the principle of mutual recognition.
- (4) 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.

³ OJ C 12, 15.1.2001, p. 10.

(4a) Article 6 of the European Convention for the Protection of Human Rights and Fundamental Freedoms (ECHR) and 47 of the EU Charter of Fundamental Rights enshrine the right to a fair trial. Article 48 of the Charter guarantees respect for the rights of the defence. This Directive respects these rights and has to be implemented accordingly. [reply to COMP. AM. 7 and AM. 64]

(5) Although Member States are parties to the (...) 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.

(5a) Strengthening mutual trust requires a more consistent implementation of the rights and guarantees set out in Article 6 of the ECHR. It also requires, through this Directive and other measures, further development within the European Union of the minimum standards set out in the ECHR and the EU Charter of Fundamental Rights. (...) [reply to COMP. AM. 8]

(6) Article 82(2) of the Treaty provides for the establishment of minimum rules applicable in the Member States so as to facilitate mutual recognition of judgments and judicial decisions and police and judicial cooperation in criminal matters having a cross-border dimension. Point (b) of Article 82(2) refers to "the rights of individuals in criminal procedure" as one of the areas in which minimum rules may be established.

(7) 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.

- (7a-1)** *On 30 November 2009, the Council adopted the Roadmap for strengthening procedural rights of suspected and accused persons in criminal proceedings*⁴. *Taking a step-by-step approach, the Roadmap calls for the adoption of measures regarding the right to translation and interpretation (measure A), the right to information on rights and information about the charges (measure B), the right to legal advice and legal aid (measure C), the right to communication with relatives, employers and consular authorities (measure D), and regarding special safeguards for suspected or accused persons who are vulnerable (measure E).* [reply to AM. 43]
- (7a-2)** *In the Stockholm programme, adopted on 10 December 2009, the European Council welcomed the Roadmap and made it part of the Stockholm programme (point 2.4.). The European Council underlined the non-exhaustive character of the Roadmap, by inviting the Commission to examine further elements of minimum procedural rights for suspected and accused persons, and to assess whether other issues, for instance the presumption of innocence, need to be addressed, in order to promote better cooperation in this area.* [reply to AM. 43]
- (7b)** This Directive *relates to measure A of the Roadmap. It lays* down common minimum standards to be applied in the fields of interpretation and translation in criminal proceedings with a view to enhancing mutual trust among Member States. [reply to AM. 45]
- (7c)** (...) *This Directive draws on the proposal for a Council Framework Decision on the right to interpretation and translation of essential documents in criminal proceedings*⁵, *which was presented by the Commission in July 2009, and on the proposal for a Directive of the European Parliament and of the Council on the right to interpretation and translation in criminal proceedings, which was presented by the Commission in March 2010.*⁶ [reply to AM. 39]

⁴ OJ C 205, 4.12.2009, p. 1.

⁵ COM (2009) 338, 8.3.2009.

⁶ COM (2010) 0082

- (8) The rights to interpretation and to translation for those who do not understand the language of the proceedings are enshrined in Article 6 of the ECHR, *as interpreted by* the case law of the European Court of Human Rights. The provisions of this Directive facilitate the application of those rights in practice. ***To this end, this Directive intends to ensure the rights of a suspected or accused person to interpretation and to translation in criminal proceedings with a view to safeguarding the person's right to a fair trial.*** [reply to COMP. AM. 9]
- (9) The rights provided for in this Directive should also apply, *as necessary accompanying measures, to* the execution of a European Arrest Warrant within the limits provided for by this Directive. Executing Members States should provide, and bear the costs *for*, interpretation and translation for the benefit of the requested person who does not understand or speak the language of the proceedings. [reply to AM. 49]
- (9a) ***In some Member States, relatively minor offences, for example traffic offences which are committed on a large scale, may be responded to by imposing a sanction by a competent authority other than a court having jurisdiction in criminal matters, e.g. following a traffic control. In such situations, it would be unreasonable to require that the competent authorities should be able to provide all the rights under this Directive. Therefore, 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 that sanction may be appealed to such a court, then this Directive shall only apply to the proceedings before that court following such an appeal.*** [reply to AM. 19]
- (10) ***This Directive should ensure that there is free and adequate linguistic assistance, allowing suspected and accused persons who do not speak or understand the language of the criminal proceedings to fully exercise the right to defend themselves and safeguard the fairness of the proceedings.*** [reply to COMP. AM. 10]

- (10a) *Interpretation for the benefit of the suspected or accused person should be provided without delay. In a given case, it could happen that a certain period of time elapses before interpretation is provided, without this constituting an infringement of the requirement that the interpretation should be provided without delay, as long as this is reasonable in the circumstances. [new recital accompanying Article 2.1]*
- (10a-2) *Communication between the suspected or accused person and his legal counsel should be interpreted in accordance with the provisions of this Directive. The suspected or accused person should be able, inter alia, to explain his version of the events to his legal counsel, point out any statements with which he disagrees and make his legal counsel aware of any facts that should be put forward in his defence. [reply to AM. 50]*
- (10a-3) *In order to allow the preparation of the defence, communication between the suspected or accused person and his legal counsel in direct connection with (...) any questioning or hearing during the proceedings, or with the lodging of an appeal or other procedural applications, such as for bail, should be interpreted where this is necessary for the purpose of ensuring the fairness of the proceedings. (...) [new recital accompanying Article 2.1a]*
- (10b) *Member States should ensure that there is a procedure or mechanism in place to ascertain whether the suspected or accused person understands and speaks the language of the criminal proceedings and needs the assistance of an interpreter. Such procedure or mechanism implies that the competent authority verifies in any appropriate manner, including by consulting the suspected or accused person concerned, whether he understands and speaks the language of the criminal proceedings and whether he needs the assistance of an interpreter. [reply to AM. 22]*
- (10c) *Interpretation and translation in application of this Directive should be provided in the native language of the suspected or accused person or in any other language that he understands and that allows him to fully exercise the right to defend himself, and guaranteeing the fairness of the proceedings. [new explicative recital accompanying Article 2]*

- (10d) *The respect for the rights to interpretation and to translation contained in this Directive should not compromise any other procedural right provided under national law. [reply to AM. 35]*
- (11) (deleted) [reply to AM. 5]
- (11a) *Member States should ensure that control can be exercised over the adequacy of the interpretation and translation provided (...) when the competent authorities have been put on notice in a given case. [reply to AM. 51]*
- (12) *The suspected or accused person or the person subject to proceedings for the execution of a European Arrest Warrant should have the right to challenge the finding that there is no need for interpretation, in accordance with procedures in national law. This right does not entail the obligation for Member States to provide for a separate mechanism or complaint procedure in which such finding may be challenged and should not prejudice the time limits applicable to the execution of a European Arrest Warrant.*
- 12(a) *When the quality of the interpretation is considered insufficient to guarantee the right to a fair trial, the competent authorities should be able to replace the appointed interpreter. [reply to AM. 51]*
- (13) (deleted)
- (14) The duty of care towards suspected or accused persons who are in a potentially weak position, in particular because of physical impairments which affect their ability to communicate effectively, underpins a fair administration of justice. The prosecution, law enforcement and judicial authorities should therefore ensure that these persons are able to exercise effectively the rights provided for in this Directive, for example by paying attention to any potential vulnerability that affects their ability to follow the proceedings and make themselves understood, and by taking appropriate steps to ensure these rights.

- (14x) *When employing videoconferencing for the purpose of remote interpretation, the competent authorities could rely on the tools that are being developed in the context of the European e-Justice (e.g. information on courts with videoconferencing equipment or manuals). [new explicative recital accompanying Article 2.4a]*
- (14a) *This Directive should be evaluated in the light of the practical experience gained. If appropriate, it should be amended (...) so as to improve the safeguards which it lays down. [reply to AM. 10]*
- (15) Safeguarding the fairness of the proceedings requires that essential documents, or at least the **relevant** passages of such documents, be translated for the benefit of the suspected or accused person **in accordance with the provisions of this Directive**. Some documents should always be considered essential **for that purpose, and therefore be translated**, such as the decision depriving a person of his liberty, the charge or indictment and any judgment. It is up to the authorities of the Member States to decide, **on their own motion or upon a request of the suspected or accused person or his legal counsel, which other documents are essential to safeguard the fairness of the proceedings, and should therefore be translated as well**.
- (16) (deleted)
- (16a) *Member States should facilitate access to national databases of legal translators and interpreters where these databases exist. In this context, particular attention should be paid to the aim of providing access to existing databases through the E-Justice portal, as planned in the European e-Justice action plan of 27 November 2008⁷. [reply to AM. 59 and 61]*

⁷ OJ C 75 of 03.03.09, p.1.

- (16b) This Directive should set minimum rules. Member States should be able to extend the rights set out in this Directive 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 go below the standards provided by the European Convention on Human Rights or the EU *Charter of Fundamental Rights as interpreted in the case-law of the European Court of Human Rights or the European Court of Justice*. [reply to AM. 60 and 62]
- (17) (deleted)
- (18) The provisions of this Directive *which* correspond to rights guaranteed by the ECHR *or by the Charter should be interpreted and* implemented consistently with those *rights*, as *developed in* the relevant case-law of the European Court of Human Rights *and the Court of Justice of the European Union*. [reply to AM. 13]
- (19) Since the objective of this Directive, that is, achieving common minimum standards, cannot be sufficiently achieved by the Member States and can therefore, by reason of the scale and effects of the proposed action, be better achieved at Union level, the Union may adopt measures in accordance with the principle of subsidiarity as referred to and defined in Article 5 of the Treaty on European Union. In accordance with the principle of proportionality, as set out in that Article, this Directive does not go beyond what is necessary in order to achieve that objective.
- (20) *In accordance with Article 3 of the Protocol on the Position of the United Kingdom and Ireland in respect of the Area of Freedom, Security and Justice, annexed to the Treaty on European Union and to the Treaty on the Functioning of the European Union, the United Kingdom and Ireland have notified their wish to take part in the adoption and application of this Directive*. [reply to AM. 67]

(21) *In accordance with Article 1 and 2 of the Protocol on the Position of Denmark, annexed to the Treaty on European Union and to the Treaty on the Functioning of the European Union, Denmark is not taking part in the adoption of this Directive and is not bound by it or subject to its application, [reply to AM. 67]*

HAVE ADOPTED THIS DIRECTIVE:

Article 1

Scope

1. This Directive lays down rules concerning the rights to interpretation and to translation in criminal proceedings and proceedings for the execution of a European Arrest Warrant.
2. *Those rights apply to any person from the time that 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, which is understood to mean the final determination of the question whether the suspected or accused person has committed the offence, including, where applicable, sentencing and the resolution of any appeal. [reply to AM. 16]*
3. *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 that sanction may be appealed to such a court, then this Directive shall only apply to the proceedings before that court following such an appeal.*
4. *This Directive does not affect rules of national law concerning the presence of a legal counsel during any stage of the criminal proceedings, nor does it affect rules of national law concerning the right of access of a suspected or accused person to documents in criminal proceedings.*

Article 2

Right to interpretation

1. Member States shall ensure that a suspected or accused person who does not understand or speak the language of the criminal proceedings concerned is provided without (...) *delay* with interpretation *during criminal proceedings before investigative and judicial authorities, including during police questioning, during all court hearings and during any necessary interim hearings.* [reply to COMP. AM. 1 and AM. 72]
- 1a. *Member States shall ensure that, where necessary for the purpose of ensuring the fairness of the proceedings, interpretation is available for communication between the suspected or accused person and his legal counsel in direct connection with (...) any questioning or hearing during the proceedings or with the lodging of an appeal or other procedural applications.*
2. *The right to interpretation includes assistance of persons with hearing or speech impediments.* [reply to COMP. AM. 2 and AM. 76]
3. Member States shall ensure that *a procedure or mechanism is in place to ascertain whether the suspected or accused person understands and speaks the language of the criminal proceedings and needs the assistance of an interpreter.* [reply to AM. 22]
4. Member States shall ensure that, *in accordance with procedures in national law, the suspected or accused person has 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 ensure the fairness of the proceedings.* [reply to COMP. AM. 3]
- 4a. *Where appropriate, technology such as videoconferencing or communication by telephone or internet may be employed, unless the physical presence of the interpreter is required in order to safeguard the fairness of the proceedings.* [reply to AM. 24]

5. In proceedings for the execution of a European Arrest Warrant, 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 in accordance with this Article.
6. ***Interpretation provided under this Article shall be of a quality sufficient to safeguard the fairness of the proceedings, in particular by ensuring that the suspected or accused person in criminal proceedings has knowledge of the case against him and is able to exercise the right to defend himself.***

Article 3

Right to translation of essential documents

1. ***Member States shall ensure that, within a reasonable period of time, a suspected or accused person who does not understand the language of the criminal proceedings concerned is provided with written translation of all documents which are essential to ensure that he is able to exercise the right to defend himself and to safeguard the fairness of the proceedings. [reply to COMP. AM. 4]***
2. ***Essential documents include decisions depriving a person of his liberty, the charge/indictment and any judgment.***
3. ***The competent authorities shall decide in any given case whether any other document is essential. The suspected or accused person or his legal counsel may submit a reasoned request to this effect.*** [reply to COMP. AM. 5 and AM. 27]
- 3a. ***Passages of essential documents which are not relevant for the suspected or accused person to have knowledge of the case against him do not have to be translated.***

4. Member States shall ensure that, *in accordance with procedures in national law, the suspected or accused person has the right to challenge a decision finding that there is no need for translation of documents or passages thereof and, when translation has been provided, the possibility to complain that the quality of the translation is not sufficient to ensure the fairness of the proceedings.* [reply to COMP. AM. 6]
5. In proceedings for the execution of a European Arrest Warrant, 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 *written* translation of that document.
6. *As an exception to the general rules established in paragraph 1, 2, 3 and 5 above, an oral translation or an oral summary of the essential documents referred to in this Article may be provided instead of a written translation, on condition that such oral translation or oral summary does not affect the fairness of the proceedings (...).* [reply to AM. 86]
7. *Any waiver of the right to translation of documents referred to in this Article should be subject to the requirements that the suspected or accused person has received prior legal advice or has otherwise obtained full knowledge of the consequences of his waiver, and that the waiver was unequivocal and given voluntarily (...).* [reply to AM. 87]
8. *Translation provided under this Article shall be of a quality sufficient to safeguard the fairness of the proceedings, in particular by ensuring that the suspected or accused person in criminal proceedings has knowledge of the case against him and is able to exercise the right to defend himself.*

Article 4

Costs of interpretation and translation

Member States shall cover the costs of interpretation and translation resulting from the application of Articles 2 and 3, irrespective of the outcome of the proceedings.

Article 5

Quality of the interpretation and translation

1. *Member States shall take concrete measures to ensure that the interpretation and translation provided meets the quality required under Articles 2(6) and 3(8). [reply to AM. 32]*

2. *In order to promote the adequacy of interpretation and translation and efficient access to it, 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 should be made available to legal counsel and relevant authorities.* [reply to AM. 34]

3. *Member States shall ensure that interpreters and translators will be required to observe confidentiality regarding interpretation and translation provided under this Directive.* [reply to COMP. AM. 1 and AM. 72]

Article 5a

Training

Without prejudice to judicial independence or different judicial organisations in the European Union, Member States shall request those responsible for the training of judges, prosecutors and judicial staff involved in criminal proceedings to give special attention to the particularities of communicating with the assistance of an interpreter so as to ensure efficient and effective communication.

Article 5b

Keeping of record

Member States shall ensure that when interviews with a suspected or accused person have been conducted by an investigative or judicial authority with the aid of an interpreter pursuant to Article 2, when an oral translation or oral summary of essential documents is provided in the presence of such an authority pursuant to Article 3(6), or when there is a waiver of rights pursuant to Article 3(7), it will be noted that these events have occurred, using the recording procedure in accordance with the national law of the Member State concerned. [reply to AM. 36]

Article 6
Non-regression clause

Nothing in this Directive shall be construed as limiting or derogating from any of the rights and procedural safeguards that may be ensured under the European Convention for the Protection of Human Rights and Fundamental Freedoms, ***under the EU Charter of Fundamental Rights***, under other relevant provisions of international law or under the laws of any Member States which provide a higher level of protection. [reply to AM. 89]

Article 7
Implementation

1. Member States shall ***bring into force the laws, regulations and administrative provisions*** necessary to comply with this Directive by ...⁸ [reply to AM. 37]

2. ***Member States shall transmit to the Commission the text of the provisions transposing into their national law the obligations imposed on them under this Directive.*** [reply to AM. 91]

3. ***When Member States adopt those measures, they shall contain a reference to this Directive or shall be accompanied by such a reference on the occasion of their official publication. The methods of making such reference shall be laid down by the Member States.*** [reply to AM. 92]

⁸ OJ: Please insert a date **36** months after the publication of this Directive in the Official Journal.

Article 8

Report

The Commission shall, by*, 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.

Article 9

Entry into force

This Directive shall enter into force on the twentieth day following that of its publication in the *Official Journal of the European Union*.

Article 10

Addressees

This Directive is addressed to the Member States.

Done at Brussels,

For the European Parliament

The President

For the Council

The President

* OJ: Please insert a date **48** months after the publication of this Directive in the Official Journal.