



**COUNCIL OF
THE EUROPEAN UNION**

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NOTE

from : Presidency
to : Delegations

Subject : Roadmap with a view to fostering protection of suspected and accused persons in
 criminal proceedings

Introduction

1. In the European Union, protection of the rights of suspected and accused persons in criminal proceedings is primarily based on the Convention for the Protection of Human Rights and Fundamental Freedoms (the "Convention") and its Protocols.
2. The Convention and its Protocols, as interpreted by the European Court of Human Rights, provide a very important common basis for Member States to have trust in each other's criminal justice systems. At the same time, there is room for further action of the European Union to ensure full implementation and respect of Convention standards, as well as, where appropriate, to expand existing standards or to make their application more uniform.

3. The European Union has successfully established an area of freedom of movement and residence, which the citizens benefit from by increasingly travelling, studying and working in other countries than that of their residence. However, the removal of internal borders and the increasing exercise of the rights to freedom of movement and residence has as an inevitable consequence that cross-border criminality in the European Union is continually growing and that an increasing number of people are becoming involved in criminal proceedings in a Member State other than that of their residence. In those situations, the procedural rights of suspected and accused persons become particularly important in order to safeguard the right to a fair trial.
4. Indeed, whilst various measures have been taken at the European Union level to guarantee a high level of safety for citizens, there is an equal need to address specific problems that can arise when a person is the subject of a criminal investigation.
5. In general, a person who is involved in criminal proceedings in a country which is not his/her country of residence will know less about his/her rights than residents of that country. Also, the person concerned may not understand or speak the language of the proceedings.
6. This calls for specific measures on procedural rights, in order to ensure the fairness of the criminal proceedings. Such measures will enhance citizens' confidence that the European Union and its Member States will protect and guarantee their rights.
7. Fostering the protection of procedural rights will also facilitate the application of the principle of mutual recognition of judicial decisions, enshrined in the conclusions of the 1999 Tampere European Council and reaffirmed in the 2004 Hague programme.
8. Mutual recognition presupposes that the competent authorities of the Member States trust the criminal justice systems of the other Member States. For the purpose of enhancing mutual trust within the European Union, it is important that there exist European Union standards for the protection of procedural rights.

9. Recent studies show that there is wide support among experts for European Union legislation on procedural rights and that there is a need for enhanced mutual trust between the judicial authorities in the Member States¹. These sentiments are echoed by the European Parliament². In its communication for the Stockholm programme³, the European Commission observes that strengthening the rights of the defence is vital in order to maintain mutual trust between the Member States and public confidence in the European Union.
10. Discussions on procedural rights within the context of the European Union over the last few years have not led to any concrete results. However, a lot of progress has been made in the area of judicial and police cooperation on measures that facilitate prosecution. It is now time to take action to improve the balance between these measures and the protection of procedural rights of the individual. We must be able to guarantee our citizens safety and the rule of law, no matter where in the Union they decide to study, work or live.
11. Bearing in mind the importance and complexity of these issues, it seems appropriate to address them in a step-by-step-approach, whilst ensuring overall coherence. By addressing future actions one area at a time, focused attention can be paid to each individual measure, so as to enable problems to be identified and addressed in a way that will give added value to each measure.
12. Any new EU legislative acts in this field should be coherent and consistent with the minimum standards set out by the Convention and its Protocols, as interpreted by the European Court of Human Rights (“Strasbourg-proof”).

¹ "Analysis of the future of mutual recognition in criminal matters in the European Union", report of 20 November 2008 by the *Université Libre de Bruxelles*.

² See e.g. the "*European Parliament recommendation of 7 May 2009 to the Council on development of an EU criminal justice area*", 2009/2012(INI), point 1 a).

³ "*An area of freedom, security and justice serving the citizen*", COM (2009) 262/4 (point 4.2.2.).

Proposed action

Common action at the European level within the area of the protection of the individual in criminal proceedings can comprise legislation as well as other measures.

The Council is invited to agree to the roadmap on procedural rights set out in the Annex. The rights included in this roadmap, which could be complemented by other rights, are considered to be fundamental procedural rights which should be given priority at this stage.

The Council is also invited to make a statement along the following lines:

"The Council agrees that the measures listed in the "roadmap on procedural rights" should be examined and adopted with a view to creating a set of procedural rights fostering the protection of suspected and accused persons in criminal proceedings. The Commission is invited to submit proposals regarding the measures set out in the roadmap, and to present the Green Paper mentioned under point F. The Council will examine all proposals presented in the context of the roadmap and pledges to deal with them as matters of priority. The Council shall act in full cooperation with the European Parliament, in accordance with the applicable rules."

Roadmap on procedural rights

(the order of the rights indicated in this roadmap is indicative)

Measure A: Translation and Interpretation

Short explanation:

The suspect and defendant must be able to understand what is happening and to make him/herself understood. A suspect or defendant who does not speak the language that is used in the proceedings will need an interpreter and translation of essential procedural documents. Particular attention should also be paid to the needs of suspects and defendants with hearing or speech impairments.

Measure B: Information on Rights and Information about the Charges

Short explanation:

The suspect or defendant is likely to know very little about his/her rights. A person that is suspected of a crime should get information on his/her basic rights in writing [, ideally by way of a letter of rights]. Furthermore, that person should also be entitled to receive information about the nature and cause of the accusation against him or her. The right to information should also include access to the file for the individual concerned.

Measure C: Legal Aid and Legal Advice

Short explanation:

The right to legal advice (through a legal counsel) is fundamental in order to safeguard the fairness of the proceedings; the right to legal aid should ensure full equality of access to the aforementioned right to legal advice.

Measure D: Communication with Relatives, Employers and Consular Authorities

Short explanation:

A person that has been deprived of his/her liberty must be able to inform his/her relatives, employers and consular authorities of the deprivation of liberty.

Measure E: Special Safeguards for Vulnerable Persons

Short explanation:

It is important that special care is shown to vulnerable suspects and defendants, in order to safeguard the fairness of the proceedings.

Measure F: A Green Paper on the Right to Review of the Grounds for Detention

Short explanation:

The time that a person can spend in detention before having his case tried in court varies a lot between the Member States. Long periods of detention are detrimental for the individual, can have a negative effect on the mutual trust and the judicial cooperation between the Member States and do not represent the values for which the European Union stands. The possibility of establishing a periodical review for the justification of continued detention should be examined.
