Deutscher Bundestag **Drucksache 16/13982**

16. Wahlperiode 03. 09. 2009

Beschlussempfehlung und Bericht

des Rechtsausschusses (6. Ausschuss)

zu der Unterrichtung durch die Bundesregierung
– Drucksache 16/13912 Nr. A.4 –

Vorschlag für einen Rahmenbeschluss des Rates über das Recht auf Verdolmetschung und Übersetzung in Strafverfahren (inkl. 11917/09 ADD 1 und 11917/09 ADD 2) (ADD 1 in Englisch)

KOM(2009) 338 endg.; Ratsdok. 11917/09

A. Problem

Der Rahmenbeschlussentwurf erstrebt die Festlegung gemeinsamer Mindestnormen für das Recht auf Verdolmetschung und Übersetzung in Strafverfahren innerhalb der EU, indem das Recht auf unentgeltliche Verdolmetschung und Übersetzung, das sich aus der Europäischen Menschenrechtskonvention (EMRK) ergibt, festgelegt wird. Die Rechte von verdächtigen Personen, die die Verhandlungssprache des Gerichts weder sprechen noch verstehen, sollen gestärkt werden. Gemeinsame Mindestnormen bei diesen Verfahrensrechten sollen die Anwendung des Grundsatzes der gegenseitigen Anerkennung erleichtern.

Im Rahmen eines Testlaufs, der auf Anregung der Konferenz der Ausschüsse für Gemeinschafts- und Europaangelegenheiten der Parlamente der Europäischen Union (COSAC) durchgeführt wird, ist zu prüfen, ob der Entwurf des Rahmenbeschlusses mit den Grundsätzen der Subsidiarität vereinbar ist.

B. Lösung

Kenntnisnahme des Vorschlags und Feststellung, dass keine Bedenken hinsichtlich der Einhaltung des gemeinschaftsrechtlichen Grundsatzes der Subsidiarität bestehen. Diese Feststellung wird im Falle der Annahme der Beschlussempfehlung als Stellungnahme des Deutschen Bundestages innerhalb der für den Testlauf vorgesehenen Achtwochenfrist an die Präsidenten des Europäischen Parlaments, des Europäischen Rates und der Europäischen Kommission übermittelt.

Kenntnisnahme des Vorschlags und Feststellung, dass dieser keinen Bedenken hinsichtlich der Einhaltung des gemeinschaftsrechtlichen Grundsatzes der Subsidiarität begegnet

C. Alternativen

Keine

D. Kosten

Wurden im Ausschuss nicht erörtert.

Beschlussempfehlung

Der Bundestag wolle beschließen,

in Kenntnis der Unterrichtung durch die Bundesregierung auf Drucksache 16/13912 Nr. A.4 festzustellen, dass der Vorschlag der EU-Kommission für einen Rahmenbeschluss des Rates über das Recht auf Verdolmetschung und Übersetzung in Strafverfahren keinen Bedenken hinsichtlich der Einhaltung des gemeinschaftsrechtlichen Grundsatzes der Subsidiarität begegnet.

Berlin, den 26. August 2009

Der Rechtsausschuss

Andreas Schmidt (Mülheim)
Vorsitzender

Daniela Raab
Berichterstatterin

Joachim Stünker
Berichterstatter

Mechthild Dyckmans
Berichterstatterin

Sevim Dağdelen
Berichterstatterin

Bericht der Abgeordneten Daniela Raab, Joachim Stünker, Mechthild Dyckmans und Sevim Dağdelen

I. Überweisung

Das Ratsdokument 11917/09 wurde mit Überweisungsdrucksache 16/13912 (Nr. A.4) vom 19. August 2009 gemäß § 93 Absatz 1 GO dem Rechtsausschuss zur federführenden Beratung sowie dem Ausschuss für die Angelegenheiten der Europäischen Union zur Mitberatung überwiesen.

II. Stellungnahme des mitberatenden Ausschusses

Der **Ausschuss für die Angelegenheiten der Europäischen Union** hat das Ratsdokument 11917/09 in seiner 91. Sitzung am 2. September 2009 beraten und einstimmig beschlossen zu empfehlen, den Vorschlag zur Kenntnis zu nehmen.

III. Beratungsverlauf und Beratungsergebnisse im federführenden Ausschuss

Der **Rechtsausschuss** hat die Vorlage in seiner 149. Sitzung am 26. August 2009 beraten und mit den Stimmen der Fraktionen CDU/CSU, SPD, FDP und DIE LINKE. bei Abwesenheit der Fraktion BÜNDNIS 90/DIE GRÜNEN beschlossen, dem Plenum die Kenntnisnahme des Vorschlags zu empfehlen. Mit demselben Stimmenverhältnis hat er bei Abwesenheit der Fraktion BÜNDNIS 90/DIE GRÜNEN beschlossen zu empfehlen, keine Bedenken hinsichtlich der Einhaltung des Grundsatzes der Subsidiarität zu erheben.

Berlin, den 26. August 2009

Daniela Raab	**Joachim Stünker**	**Mechthild Dyckmans**	**Sevim Dağdelen**
Berichterstatterin	Berichterstatter	Berichterstatterin	Berichterstatterin

RAT DER EUROPÄISCHEN UNION

Brüssel, den 15. Juli 2009 (OR. en)

11917/09

Interinstitutionelles Dossier: 2009/0101 (CNS)

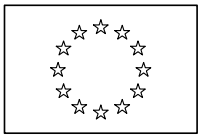
DROIPEN 60 COPEN 133

VORSCHLAG

der	Europäischen Kommission
vom	9. Juli 2009
Betr.:	Vorschlag für einen RAHMENBESCHLUSS DES RATES über das Recht auf Verdolmetschung und Übersetzung in Strafverfahren

Die Delegationen erhalten in der Anlage den mit Schreiben von Herrn Jordi AYET PUIGARNAU, Direktor, an den Generalsekretär/Hohen Vertreter, Herrn Javier SOLANA, übermittelten Vorschlag der Europäischen Kommission.

Anl.: KOM(2009) 338 endgültig



KOMMISSION DER EUROPÄISCHEN GEMEINSCHAFTEN

Brüssel, den 8.7.2009
KOM(2009) 338 endgültig

2009/0101 (CNS)

Vorschlag für einen

RAHEMENBESCHLUSS DES RATES

über das Recht auf Verdolmetschung und Übersetzung in Strafverfahren

{SEK(2009) 915}
{SEK(2009) 916}

BEGRÜNDUNG

1. EINFÜHRUNG

1. Mit dem vorliegenden Vorschlag für einen Rahmenbeschluss sollen gemeinsame Mindestnormen für das Recht auf Verdolmetschung und Übersetzung in Strafverfahren innerhalb der Europäischen Union festgelegt werden. Der Vorschlag ist als Auftakt zu einer Reihe von Maßnahmen gedacht, die den Kommissionsvorschlag aus dem Jahr 2004 für einen Rahmenbeschluss des Rates über bestimmte Verfahrensrechte in Strafverfahren innerhalb der Europäischen Union - KOM(2004) 328 vom 28.4.2004 - ersetzen soll, der nach entsprechender Mitteilung an den Rat und das Europäische Parlament zurückgezogen wird. Trotz dreijähriger Verhandlungen in der Arbeitsgruppe des Rates konnte kein Einvernehmen über den Vorschlag erzielt werden, so dass er im Juni 2007 nach ergebnislosen Gesprächen im Rat „Justiz“ schließlich fallen gelassen wurde. Mittlerweile gilt ein schrittweises Vorgehen als gemeinhin akzeptable Lösung, zumal es dazu beiträgt, allmählich gegenseitiges Vertrauen aufzubauen. Der vorliegende Vorschlag ist daher als Teil eines umfassenden legislativen Maßnahmenpakets zu verstehen, mit dem ein Mindestmaß an Verfahrensrechten in Strafverfahren in der Europäischen Union gewährleistet werden soll. Neben dem Recht auf unentgeltliche Inanspruchnahme eines Dolmetschers/Übersetzers sah der Vorschlag von 2004 auch noch Regelungen zum Recht auf Aufklärung über die eigenen Rechte („Erklärung über die Rechte“), auf besondere Sorgfalt gegenüber verdächtigen Personen, die besondere Unterstützung benötigen, auf Kontaktaufnahme mit den Konsularbehörden und auf Benachrichtigung von Familienangehörigen vor. Bei vorliegendem Vorschlag hat die Kommission dafür optiert, sich ausschließlich auf das Recht auf Verdolmetschung und Übersetzung zu konzentrieren, da dieser Teil des Vorschlags aus dem Jahr 2004 der am wenigsten umstrittene war und bereits Informationsmaterial und Untersuchungen zu diesem Thema vorlagen.

2. Mit dem vorliegenden Vorschlag sollen die Rechte von verdächtigen Personen, die die Verhandlungssprache des Gerichts weder sprechen noch verstehen, gestärkt werden. Eine Einigung auf gemeinsame Mindestnormen bei diesen Verfahrensrechten erleichtert die Anwendung des Grundsatzes der gegenseitigen Anerkennung.

3. Die Rechtsgrundlage des Vorschlags bildet Artikel 31 Absatz 1 des Vertrags über die Europäische Union. Gemäß Buchstabe c soll die EU durch ein "gemeinsames Vorgehen" die Vereinbarkeit von Vorschriften gewährleisten, soweit dies zur Verbesserung der Zusammenarbeit erforderlich ist. Die Zusammenarbeit der Justizbehörden und insbesondere der Grundsatz der gegenseitigen Anerkennung setzt gegenseitiges Vertrauen voraus. Um das gegenseitige Vertrauen und mithin auch die Zusammenarbeit zu verbessern, müssen die Vorschriften bis zu einem gewissen Grad kompatibel sein.

4. Das Recht auf Verdolmetschung und Übersetzung, das sich aus der Europäischen Menschenrechtskonvention (EMRK) ergibt, ist von grundlegender Bedeutung für eine strafrechtlich verfolgte Person, die die Verfahrenssprache nicht beherrscht, damit sie weiß, welche Anschuldigungen gegen sie erhoben werden, und damit sie dem Verfahren folgen kann. Eine verdächtigte Person muss verstehen, wessen sie beschuldigt wird. Wichtige Verfahrensunterlagen sollten in einer Übersetzung vorliegen. Laut Europäischer Menschenrechtskonvention sind die Dolmetsch- und Übersetzungsdienste unentgeltlich zur Verfügung zu stellen.

5. Folgenabschätzung

Der Vorschlag war Gegenstand einer Folgenabschätzung (Dok. SEK(2009) 915), die vom Ausschuss für Folgenabschätzung geprüft und am 27. Mai 2009 gebilligt wurde. Die Empfehlungen des Ausschusses und die Art ihrer Berücksichtigung können unter Ziffer 25 der Folgenabschätzung http://ec.europa.eu/governance/impact/practice_de.htm) nachgelesen werden. Folgende Optionen standen zur Debatte:

(a) Im Falle der Beibehaltung des Status quo erübrigt sich ein Tätigwerden der EU. Es wäre vorstellbar, dass die augenblickliche Situation, in der davon ausgegangen wird, dass die Mitgliedstaaten ihren Pflichten aus der Europäischen Menschenrechtskonvention nachgekommen, so bleibt wie bisher, was aber auch bedeuten würde, dass das gelegentlich als unausgewogen empfundene Kräfteverhältnis zwischen den Strafverfolgungsbehörden und der strafrechtlich verfolgten Person, das bisher ein Hindernis für die gegenseitige Anerkennung bildete, bestehen bliebe. Kosten würden in diesem Fall so gut wie keine entstehen.

(b) Nichtlegislative Maßnahmen wie Empfehlungen würden den Austausch zwischen den Mitgliedstaaten fördern und beim Ausfindigmachen bewährter Verfahrensweisen helfen. Durch die Verbreitung und Weiterempfehlung dieser Verfahren würden die Normen der Europäischen Menschenrechtskonvention stärker ins allgemeine Bewusstsein dringen und würde sich mithin auch ihre Einhaltung verbessern. Eine weitere Annäherung von Rechtsnormen würde auf diesem Weg allerdings nicht erreicht.

(c) Es wird ein neuer Rechtsakt angenommen, der sich den Vorschlag von 2004 aufgreift und Regelungen zu sämtlichen Verfahrensgarantien enthält. Seine Umsetzung durch die Mitgliedstaaten und Überwachung durch die Kommission sowie die Möglichkeit, sich vor dem Europäischen Gerichtshof auf das Rechtsinstrument zu berufen, würden Unterschiede in der Anwendung der EMRK beseitigen helfen und das gegenseitige Vertrauen stärken. Bei dieser Option würden zum einen Kosten entstehen, weil Vorkehrungen getroffen werden müssten, um die Wahrung dieser Rechte sicherzustellen, zum anderen aber auch Kosten eingespart, weil weniger Rechtsmittel eingelegt würden.

(d) Eine Teillösung wäre eine auf grenzüberschreitende Fälle beschränkte Maßnahme. Sie müsste jedoch sorgsam durchdacht werden, um auf das Problem einer etwaigen Ungleichbehandlung von Tatverdächtigen in grenzüberschreitenden Verfahren im Verhältnis zu Tatverdächtigen in rein innerstaatlichen Verfahren eine angemessene Antwort zu finden. Wie bei der vorangegangenen Option würden bei dieser Lösung zum einen Kosten entstehen, weil Vorkehrungen getroffen werden müssten, um die Wahrung der Rechte der Betroffenen sicherzustellen, zum anderen aber auch Kosten eingespart, weil sich die Zahl nächstinstanzlicher Verfahren verringern würde, wenn auch in geringerem Maße als bei obiger Option, weil die Teillösung ein geringeres Spektrum von Fällen abdecken würde.

(e) Die bevorzugte Option ist ein schrittweises Vorgehen, bei dem Maßnahmen, die den Zugang zu Dolmetsch- und Übersetzungsleistungen regeln, den Anfang machen und den Mitgliedstaaten im Wege eines Rahmenbeschlusses des Rates lediglich beim Zugang zu Dolmetsch- oder Übersetzungsleistungen Mindestnormen auferlegt werden. Bei dieser Option würden zum einen Kosten entstehen, weil Vorkehrungen getroffen werden müssten, um die Wahrung dieser Rechte sicherzustellen, zum anderen aber auch Kosten eingespart, weil nicht so oft Rechtsmittel eingelegt würden.

Bei der Folgenabschätzung wurde einer Kombination aus b) und e) der Vorzug gegeben, bei der die Vorteile einer legislativen Maßnahme mit denen einer nichtlegislativen

Maßnahme gebündelt werden. Dem Rahmenbeschluss soll daher eine Unterlage über bewährte Verfahrensweisen folgen.

2. HINTERGRUND

6. Gemäß Artikel 6 des Vertrags über die Europäische Union (EUV) achtet die Union die Grundrechte, wie sie in der Europäischen Konvention zum Schutze der Menschenrechte und Grundfreiheiten (EMRK) gewährleistet sind und wie sie sich aus den gemeinsamen Verfassungsüberlieferungen der Mitgliedstaaten ergeben. Außerdem haben das Europäische Parlament, der Rat und die Kommission im Dezember 2000 gemeinsam die Charta der Grundrechte der Europäischen Union unterzeichnet und feierlich proklamiert.

7. In den Schlussfolgerungen des Vorsitzes des Europäischen Rates von Tampere[1] wird die gegenseitige Anerkennung zum Eckstein der justiziellen Zusammenarbeit erklärt. Zugleich wird betont, dass die gegenseitige Anerkennung „[…] und die notwendige Annäherung der Rechtsvorschriften […] den Schutz der Rechte des Einzelnen durch die Justiz erleichtern [würden]“[2].

8. In der Mitteilung der Kommission an den Rat und das Europäische Parlament vom 26. Juli 2000 über die gegenseitige Anerkennung von Endentscheidungen in Strafsachen[3] heißt es: "Daher muss sichergestellt werden, dass die Behandlung verdächtiger Personen und die Wahrung der Verteidigungsrechte durch die Anwendung dieses Grundsatzes [der gegenseitigen Anerkennung] nicht nur nicht beeinträchtigt, sondern sogar verbessert würden."

9. Hierauf wurde auch im Maßnahmenprogramm des Rates und der Kommission zur Umsetzung des Grundsatzes der gegenseitigen Anerkennung gerichtlicher Entscheidungen in Strafsachen[4] („Maßnahmenprogramm“) abgehoben. Dem zufolge „ist das Ausmaß der gegenseitigen Anerkennung eng verknüpft mit dem Bestehen und dem Inhalt bestimmter Parameter, die für die Effizienz des Verfahrens ausschlaggebend sind“.

10. Zu diesen Parametern zählen Mechanismen zum Schutz der Rechte von verdächtigten Personen (Parameter 3) sowie die Festlegung der gemeinsamen Mindestnormen, deren es zur Erleichterung der Anwendung des Grundsatzes der gegenseitigen Anerkennung bedarf (Parameter 4). Der vorliegende Vorschlag für einen Rahmenbeschluss ist Ausdruck des erklärten Ziels, die Persönlichkeitsrechte zu stärken.

3. RECHT AUF ÜBERSETZUNG UND BEIZIEHUNG EINES DOLMETSCHERS GEMÄß DER EUROPÄISCHEN MENSCHENRECHTSKONVENTION

11. In Artikel 5 der EMRK – Recht auf Freiheit und Sicherheit – heißt es:

„1. Jede Person hat das Recht auf Freiheit und Sicherheit. Die Freiheit darf nur in den folgenden Fällen und nur auf die gesetzlich vorgeschriebene Weise entzogen werden: […]

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1 15. und 16. Oktober 1999.
2 Schlussfolgerung 33.
3 KOM(2000) 495 endg. vom 29.7.2000.
4 ABl. C 12 vom 15.1.2001, S. 10.

f) rechtmäßige Festnahme oder rechtmäßiger Freiheitsentzug […] bei Personen, gegen die ein […] Auslieferungsverfahren im Gange ist

2. Jeder festgenommenen Person muss unverzüglich in einer ihr verständlichen Sprache mitgeteilt werden, welches die Gründe für ihre Festnahme sind und welche Beschuldigungen gegen sie erhoben werden.

[…]

4. Jede Person, die festgenommen oder der die Freiheit entzogen ist, hat das Recht zu beantragen, dass ein Gericht innerhalb kurzer Frist über die Rechtmäßigkeit des Freiheitsentzugs entscheidet und ihre Entlassung anordnet, wenn der Freiheitsentzug nicht rechtmäßig ist.“

Artikel 6 der EMRK – Recht auf ein faires Verfahren – lautet:

„3. Jede angeklagte Person hat mindestens folgende Rechte:

a. innerhalb möglichst kurzer Frist in einer ihr verständlichen Sprache in allen Einzelheiten über Art und Grund der gegen sie erhobenen Beschuldigung unterrichtet zu werden;

[…]

e. unentgeltliche Unterstützung durch einen Dolmetscher zu erhalten, wenn sie die Verhandlungssprache des Gerichts nicht versteht oder spricht."

In der Charta der Grundrechte der Europäischen Union kommen diese Rechte in den Artikeln 6 sowie 47 bis 50 zum Ausdruck.

12. Der Europäische Gerichtshof für Menschenrechte (EGMR) befand im Zusammenhang mit Artikel 6 EMRK, dass der Beschuldigte selbst im Falle seiner Verurteilung Anspruch auf unentgeltliche Beiziehung eines Dolmetschers habe; auch müssten die Unterlagen, aus denen hervorgeht, welche Beschuldigungen gegen ihn erhoben werden, in einer ihm verständlichen Sprache vorliegen; schließlich müsse die Verdolmetschung ein Niveau besitzen, das es der betreffenden Person ermöglicht, dem Verfahren zu folgen, und es müsse ein sachkundiger Dolmetscher hinzugezogen werden. Dass das Recht auf unentgeltliche Beiziehung eines Dolmetschers auch im Falle einer Verurteilung besteht, wurde im Fall *Luedicke, Belkacem und Koç gegen Deutschland* klargestellt[5]. In *Kamasinski gegen Österreich*[6] befand der EGMR, dass die Verdolmetschung von einer Qualität sein müsse, die es dem Beschuldigten ermöglicht zu verstehen, was ihm zur Last gelegt wird, so dass er sich verteidigen könne. Dieses Recht gelte für Beweismaterial ebenso wie für sämtliche Vorverfahren. Die Qualität der Dolmetschleistung müsse angemessen sein und die jeweilige Person müsse in einer ihr verständlichen Sprache ausführlich über die gegen sie vorgebrachten Anschuldigungen informiert werden

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5 *28. November 1978, Serie A Nr..°29.* „46. Der Gerichtshof gelangt zu der Feststellung, dass dem üblichen Sinn der Termini „gratuitement“ und „free“ („unentgelgtlich“[sic]) in Art. 6 Abs. 3 lit. e der Zusammenhang der Bestimmung nicht widerspricht und dass Ziel und Zweck des Art. 6 ihn bestätigen. Er kommt zum Ergebnis, dass das in Art. 6 Abs. 3 lit. e geschützte Recht für jedermann, der die Verhandlungssprache des Gerichts nicht spricht oder versteht, den Anspruch auf unentgeltlichen Beistand eines Dolmetschers einschließt, ohne dass im Nachhinein die Zahlung der dadurch verursachten Kosten von ihm verlangt werden darf.“

6 19. Dezember 1989, Serie A Nr. 168.

(*Brozicek gegen Italien*[7]). Nicht der Beschuldigte müsse nachweisen, dass er die Gerichtssprache nicht hinreichend beherrscht, sondern die Gerichte müssten nachweisen, dass er ihrer hinreichend mächtig ist[8]. Der Dolmetscher müsse über entsprechende Kompetenzen verfügen und der Richter müsse ein faires Verfahren garantieren (*Cuscani gegen Vereinigtes Königreich*[9]).

4. DIE BESTIMMUNGEN IM EINZELNEN

13. Der vorliegende Vorschlag für einen Rahmenbeschluss formuliert grundlegende Pflichten und stützt sich dabei auf die Europäische Menschenrechtskonvention und die Rechtsprechung des EGMR. Vom „Reflection Forum on Multilingualism and Interpreter Training" stammt ein Bericht mit Empfehlungen zur Qualität der Ausbildung von Dolmetschern und Übersetzern[10]. Der Bericht ist das Ergebnis verschiedener Treffen des Forums im Jahr 2008, das von der Generaldirektion Dolmetschen den Auftrag erhalten hatte, einen etwaigen Handlungsbedarf festzustellen und gegebenenfalls Abhilfemaßnahmen vorzuschlagen. Das Forum kam zu dem Schluss, dass Handlungsbedarf bestehe, und gab Empfehlungen ab, wie das Angebot an kompetenten und qualifizierten Dolmetschern in Strafverfahren verbessert werden könne. Zu den Empfehlungen gehörte auch, dass jeder Mitgliedstaat über einen Lehrplan für das Fach Gerichtsdolmetschen sowie ein Verfahren zur Zulassung, Zertifzierung und amtlichen Registrierung von Gerichtsdolmetschern verfügt.

Artikel 1 - Geltungsbereich

14. Der Geltungsbereich erstreckt sich auf sämtliche Personen, die verdächtigt werden, eine Straftat begangen zu haben, bis zu ihrer endgültigen Verurteilung (einschließlich etwaiger Rechtsmittelinstanzen). Der Begriff „verdächtige Person" ist hier in diesem Sinne zu verstehen, unabhängig davon, wie diese Personen in nationalen Strafverfahren bezeichnet werden.

15. Die Rechtsprechung des EGMR hat klargestellt, dass sich Personen, die wegen einer Straftat vernommen werden, auf Artikel 6 EMRK berufen können, gleich, ob gegen sie Strafantrag gestellt wurde oder nicht. Hieraus folgt, dass dieses Recht auch für im Zusammenhang mit einer Straftat festgenommene oder festgehaltene Personen gilt. Das Recht gilt ab dem Zeitpunkt, zu dem die betreffende Person darüber informiert wird, dass sie verdächtigt wird, eine Straftat begangen zu haben (z.B. bei ihrer Verhaftung oder der polizeilichen Ingewahrsamnahme).

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7 19. Dezember 1989, (10964/84) EGMR Nr 23.

8 "41[…] the Italian judicial authorities should have taken steps to comply with it so as to ensure observance of the requirements of Article 6 § 3 (a) (art. 6-3-a), unless they were in a position to establish that the applicant in fact had sufficient knowledge of Italian to understand from the notification the purport of the letter notifying him of the charges brought against him. No such evidence appears from the documents in the file or the statements of the witnesses heard on 23 April 1989. On this point there has therefore been a violation of Article 6 § 3 (a) (art. 6-3-a)." ["41 […] Die italienischen Behörden hätten dafür sorgen müssen, dass die Vorschriften in Artikel 6 Absatz 3 lit. a beachtet werden, es sei denn, sie hätten nachweisen können, dass der Beschwerdeführer tatsächlich ausreichende Kenntnisse der italienischen Sprache besitzt, um den Inhalt des Eröffnungsbeschlusses verstehen zu können. Die Aktenlage und die am 23. April 1989 gehörten Zeugen lassen jedoch nicht darauf schließen, dass dieser Beweis erbracht worden ist. Diesbezüglich liegt somit ein Verstoß gegen Artikel 6 Absatz 3 lit. a vor."]

9 24. September 2002 – Nr. 3277/96.

10 http://ec.europa.eu/commission_barroso/orban/docs/FinalL_Reflection_Forum_Report_en.pdf

Der Artikel stellt klar, dass der Rahmenbeschluss auch für Verfahren zur Vollstreckung eines Europäischen Haftbefehls gilt. Dass Verfahren zur Vollstreckung eines Europäischen Haftbefehls ausdrücklich mit eingeschlossen sind, ist insofern von Bedeutung, als im Rahmenbeschluss zum Europäischen Haftbefehl auf diesen Punkt nur ganz allgemein eingegangen wird. Diesbezüglich ist der Vorschlag also eine Weiterentwicklung von Artikel 5 EMRK.

Artikel 2 – Recht auf Verdolmetschung

16. Dieser Artikel schreibt fest, dass während des Ermittlungs- und Gerichtsverfahrens, d.h. während der polizeilichen Vernehmung, im Prozess sowie bei allen Zwischenverfahren und in allen Instanzen für Unterstützung durch einen Dolmetscher gesorgt werden muss. Das Recht erstreckt sich auch auf den der verdächtigen Person gewährten Rechtsbeistand, sofern der Verteidiger eine Sprache spricht, die die verdächtige Person nicht versteht.

Artikel 3 – Recht auf Übersetzung maßgeblicher Unterlagen

17. Um ein faires Verfahren zu gewährleisten, hat die verdächtige Person Anspruch auf die Übersetzung maßgeblicher Unterlagen. In *Kamasinski gegen Österreich*[11] urteilte der EGMR, dass sich das Recht auf Verdolmetschung auch auf Aktenmaterial beziehen müsse und dass die einer Straftat angeklagte Person über die gegen sie vorgebrachten Anschuldigungen so weit unterrichtet sein müsse, dass sie sich verteidigen kann[12]. Maßgebliche Unterlagen in Strafverfahren sind daher die Anklageschrift und alle sonstigen sachdienlichen Unterlagen wie Zeugenaussagen, die erforderlich sind, um im Einklang mit Artikel 6 Absatz 3 Buchstabe a EMRK „in allen Einzelheiten über Art und Grund der gegen sie erhobenen Beschuldigung“ unterrichtet zu sein. Auch die Anordnung, eine

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[11] 19. Dezember 1989, Serie A Nr. 168.

[12] “74. The right […]to the free assistance of an interpreter applies not only to oral statements made at the trial hearing but also to documentary material and the pre-trial proceedings. Paragraph 3 (e) (art. 6-3-e) signifies that a person "charged with a criminal offence" who cannot understand or speak the language used in court has the right to the free assistance of an interpreter for the translation or interpretation of all those documents or statements in the proceedings instituted against him which it is necessary for him to understand or to have rendered into the court's language in order to have the benefit of a fair trial. […]However, paragraph 3 (e) (art. 6-3-e) does not go so far as to require a written translation of all items of written evidence or official documents in the procedure. The interpretation assistance provided should be such as to enable the defendant to have knowledge of the case against him and to defend himself, notably by being able to put before the court his version of the events. In view of the need for the right guaranteed by paragraph 3 (e) (art. 6-3-e) to be practical and effective, the obligation of the competent authorities is not limited to the appointment of an interpreter but, if they are put on notice in the particular circumstances, may also extend to a degree of subsequent control over the adequacy of the interpretation provided (see the Artico judgment).” [„74. Das Recht […] auf unentgeltliche Unterstützung durch einen Dolmetscher gilt nicht nur für mündliche Aussagen während des Gerichtsverfahren, sondern erstreckt sich auch auf Aktenmaterial und auf das Ermittlungsverfahren. Artikel 6 Absatz 3 lit. e bedeutet, dass eine Person, „die einer Straftat angeklagt ist“ und die die Verhandlungssprache des Gerichts nicht versteht oder spricht, Anspruch auf die unentgeltliche Beiziehung eines Dolmetschers oder Übersetzers hat, der den Inhalt aller Dokumente und Aussagen übermittelt, die sich auf das gegen sie angestrengte Verfahren beziehen und dessen Verständnis bzw. Wiedergabe in der Gerichtssprache für sie unerlässlich ist, um in den Genuss eines fairen Verfahrens zu kommen. […] Artikel 6 Absatz 3 lit. e geht jedoch nicht so weit, eine schriftliche Übersetzung aller schriftlichen Beweismittel oder amtlichen Verfahrensunterlagen zu fordern. Die Unterstützung durch einen Dolmetscher sollte dergestalt sein, dass die einer Straftat angeklagte Person weiß, welche Anschuldigungen gegen sie erhoben werden, und dass sie sich selbst verteidigen und vor allem vor Gericht ihre Version der Ereignisse schildern kann. Damit das in Artikel 6 Absatz 3 lit. e verbriefte Recht auch tatsächlich greift, sind die Behörden nicht nur verpflichtet, einen Dolmetscher zu bestellen, sondern es kann bei entsprechenden Hinweisen unter bestimmten Umständen von ihnen auch verlangt werden, dass sie hinterher bis zu einem gewissen Grad die Adäquanz der Verdolmetschung überprüfen (siehe Urteil im Fall Artico).“]

Person festzunehmen oder ihr die die Freiheit zu entziehen, muss in einer Übersetzung vorliegen ebenso wie das Gerichtsurteil, damit die betreffende Person von ihrem Recht Gebrauch machen und das Urteil überprüfen lassen kann (Artikel 2 des Protokolls Nr. 7 zur EMRK).

Bei Verfahren zur Vollstreckung eines Europäischen Haftbefehls muss dieser übersetzt werden.

Artikel 4 – Übernahme der Dolmetsch- und Übersetzungskosten durch die Mitgliedstaaten

18. Dieser Artikel bestimmt, dass die Mitgliedstaaten die Kosten für Dolmetsch- und Übersetzungsdienste zu tragen haben. Dass das Recht auf unentgeltliche Beiziehung eines Dolmetschers auch im Falle einer Verurteilung besteht, wurde im Fall *Luedicke, Belkacem und Koç gegen Deutschland* klargestellt[13].

Artikel 5 – Qualität der Dolmetsch- und Übersetzungsdienste

19. Hier werden die Grundanforderungen an die Qualität der Dolmetsch- und Übersetzungsdienste erläutert. Empfehlungen hierzu enthält der Bericht des „Reflection Forum on Multilingualism and Interpreter Training“[14].

Artikel 6 - Regressionsverbot

20. Durch diesen Artikel soll sichergestellt werden, dass durch die Festlegung gemeinsamer Mindestanforderungen im Einklang mit diesem Rahmenbeschluss bestimmte Mitgliedstaaten nicht zur Absenkung ihrer Standards gezwungen werden und dass die Standards der EMRK beibehalten werden. Es steht den Mitgliedstaaten frei, höhere Anforderungen als die des Rahmenbeschlusses festzusetzen.

Artikel 7 – Umsetzung

21. Dieser Artikel verpflichtet die Mitgliedstaaten, den Rahmenbeschluss bis zum xx.xx.20xx umzusetzen. Bis dahin müssen sie dem Rat und der Kommission auch den Wortlaut der Bestimmungen übermitteln, mit denen sie den Rahmenbeschluss in innerstaatliches Recht übernehmen.

Artikel 8 - Berichterstattung

22. xx Monate nach der Umsetzung übermittelt die Kommission dem Europäischen Parlament und dem Rat einen Bericht, in dem sie überprüft, inwieweit die Mitgliedstaaten dem Rahmenbeschluss nachgekommen sind; gegebenenfalls unterbreitet sie Vorschläge für weitere Legislativmaßnahmen.

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13 „46. Der Gerichtshof gelangt zu der Feststellung, dass dem üblichen Sinn der Termini „gratuitement“ und „free“ („unentgelgtlich“[sic]) in Art. 6 Abs. 3 lit. e der Zusammenhang der Bestimmung nicht widerspricht und dass Ziel und Zweck des Art. 6 ihn bestätigen. Er kommt zum Ergebnis, dass das in Art. 6 Abs. 3 lit. e geschützte Recht für jedermann, der die Verhandlungssprache des Gerichts nicht spricht oder versteht, den Anspruch auf unentgeltlichen Beistand eines Dolmetschers einschließt, ohne dass im Nachhinein die Zahlung der dadurch verursachten Kosten von ihm verlangt werden darf.“

14 Siehe Fußnote 10.

Artikel 9 - Inkrafttreten

23. Dieser Artikel sieht vor, dass der Rahmenbeschluss am zwanzigsten Tag nach seiner Veröffentlichung im Amtsblatt der Europäischen Union in Kraft tritt.

5. SUBSIDIARITÄTSPRINZIP

24. Das Ziel des Vorschlags lässt sich von den Mitgliedstaaten allein nicht hinreichend verwirklichen, da sein Zweck darin besteht, das Vertrauen untereinander zu fördern; es ist daher wichtig, sich auf gemeinsame Mindestnormen zu einigen, die in der gesamten Union gelten. Mit dem Vorschlag sollen die wichtigsten verfahrensrechtlichen Vorschriften der Mitgliedstaaten in Bezug auf die Beiziehung eines Dolmetschers und die Anfertigung von Übersetzungen angeglichen werden, um untereinander Vertrauen aufzubauen. Der Vorschlag steht daher mit dem Subsidiaritätsprinzip im Einklang.

6. GRUNDSATZ DER VERHÄLTNISMÄßIGKEIT

25. Der Vorschlag beachtet den Grundsatz der Verhältnismäßigkeit, da er nicht über das Maß hinausgeht, das erforderlich ist, um das erklärte Ziel auf europäischer Ebene zu erreichen.

2009/0101 (CNS)

Vorschlag für einen

RAHEMENBESCHLUSS DES RATES

über das Recht auf Verdolmetschung und Übersetzung in Strafverfahren

DER RAT DER EUROPÄISCHEN UNION -

gestützt auf den Vertrag über die Europäische Union, insbesondere auf Artikel 31 Absatz 1 Buchstabe c,

auf Vorschlag der Kommission,

nach Stellungnahme des Europäischen Parlaments,

in Erwägung nachstehender Gründe:

(1) Die Europäische Union hat sich den Aufbau eines Raums der Freiheit, der Sicherheit und des Rechts zum Ziel gesetzt. In seinen Schlussfolgerungen – insbesondere Randnummer 33 – erhob der Europäische Rat von Tampere vom 15. und 16. Oktober 1999 den Grundsatz der gegenseitigen Anerkennung zum Eckstein der justiziellen Zusammenarbeit innerhalb der Union sowohl in Zivil- als auch in Strafsachen.

(2) Am 29. November 2000 verabschiedete der Rat im Einklang mit den Schlussfolgerungen von Tampere ein Maßnahmenprogramm zur Umsetzung des Grundsatzes der gegenseitigen Anerkennung in Strafsachen[15]. In der Einleitung des Maßnahmenprogramms heißt es, die gegenseitige Anerkennung „soll es ermöglichen, nicht nur die Zusammenarbeit zwischen den Mitgliedstaaten, sondern auch den Schutz der Persönlichkeitsrechte zu verstärken."

(3) Die Umsetzung des Grundsatzes der gegenseitigen Anerkennung von Entscheidungen in Strafsachen setzt voraus, dass die Mitgliedstaaten Vertrauen in die jeweils anderen Strafrechtssysteme haben. Das Maß der gegenseitigen Anerkennung hängt von einer ganzen Reihe von Parametern ab; dazu gehören "Mechanismen für den Schutz der Rechte von […] verdächtigten Personen"[16] sowie gemeinsame Mindestnormen zur Erleichterung der Anwendung des Grundsatzes der gegenseitigen Anerkennung.

(4) Der Grundsatz der gegenseitigen Anerkennung kann nur in einem Klima des Vertrauens zum Tragen kommen, in dem nicht nur die Justizbehörden, sondern alle an Strafverfahren beteiligten Akteure Entscheidungen der Justizbehörden anderer Mitgliedstaaten als gleichwertig ansehen; hierzu bedarf es „gegenseitigen Vertrauens

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15 ABl. C 12 vom 15.1.2001, S. 10.
16 ABl. C 12 vom 15.1.2001, S. 10.

nicht nur in die Rechtsvorschriften des anderen Mitgliedstaats, sondern auch in die Tatsache, dass diese ordnungsgemäß angewandt werden“[17].

(5) Zwar haben alle Mitgliedstaaten die Europäische Konvention zum Schutze der Menschenrechte und Grundfreiheiten (EMRK) unterzeichnet, doch hat die Erfahrung gezeigt, dass dadurch allein nicht immer ein hinreichendes Maß an Vertrauen in die Strafjustiz anderer Mitgliedstaaten hergestellt wird.

(6) In Artikel 31 Absatz 1 des Vertrags über die Europäische Union ist die Rede von der „Gewährleistung der Vereinbarkeit der jeweils geltenden Vorschriften der Mitgliedstaaten untereinander, soweit dies zur Verbesserung der [justiziellen] Zusammenarbeit [in Strafsachen] erforderlich ist“. Gemeinsame Mindestnormen sollen das Vertrauen in die Strafjustiz aller Mitgliedstaaten stärken und dies wiederum soll zu einer wirksameren Zusammenarbeit der Strafjustizbehörden in einem Klima gegenseitigen Vertrauens führen.

(7) Die Verdolmetschung und Übersetzung in Strafverfahren sollen solchen gemeinsamen Normen unterworfen werden. Um das Vertrauen der Mitgliedstaaten untereinander zu stärken, werden in diesem Rahmenbeschluss gemeinsame Mindestnormen für die Verdolmetschung und Übersetzung in Strafverfahren innerhalb der Europäischen Union festgelegt, in denen sich die Traditionen der Mitgliedstaaten bei der Anwendung der entsprechenden Bestimmungen der EMRK widerspiegeln.

(8) Das Recht von Personen, die die Verfahrenssprache des Gerichts nicht verstehen, auf Verdolmetschung und Übersetzung ergibt sich aus den Artikeln 5 und 6 EMRK in der Auslegung durch den Europäischen Gerichtshof für Menschenrechte. Die Bestimmungen dieses Rahmenbeschluss erleichtern die praktische Anwendung dieses Rechts.

(9) Die Bestimmungen des Rahmenbeschlusses sollen gewährleisten, dass eine verdächtige Person imstande ist, ihr Recht auf Kenntnisnahme der gegen sie erhobenen Beschuldigungen und auf Verfolgung des Prozessgeschehens in vollem Umfang auszuüben, auch wenn sie die Verfahrenssprache nicht versteht und spricht, indem sie unentgeltliche präzise sprachliche Unterstützung erhält. Die Unterstützung muss gegebenenfalls auch zum Zwecke der Verständigung der verdächtigen Person mit ihrem Rechtsbeistand gewährt werden.

(10) Eine entsprechende Unterstützung sollte auch hör- oder sprachgeschädigten verdächtigen Personen zuteil werden.

(11) Die Pflicht, für verdächtige Personen, die das Verfahren nicht verstehen oder ihm nicht folgen können, Sorge zu tragen, ist Grundlage einer fairen Justiz. Strafverfolgungs-, Strafvollzugs- und Justizbehörden sollten daher sicherstellen, dass verdächtige Personen, die sich in einer potenziell schwachen Position befinden, imstande sind, ihre Rechte wirksam auszuüben. Sie sollten eine etwaige Benachteiligung erkennen und entsprechende Schritte einleiten, um die Rechte der betreffenden Person zu wahren. Bei minderjährigen Verdächtigen oder verdächtigen

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17 KOM(2000) 495 vom 26.7.2000, S. 4.

Personen mit einer Behinderung, die ihre aktive Teilnahme am Verfahren beeinträchtigt, sollte grundsätzlich so verfahren werden.

(12) Die Mitgliedstaaten sollten verpflichtet werden, im Interesse der Gewährleistung der Qualität der Verdolmetschung und Übersetzung Richter, Rechtsanwälte und sonstige einschlägige Gerichtsbedienstete entsprechend zu schulen.

(13) Der vorliegende Rahmenbeschluss wahrt die Grundrechte und achtet die in der Charta der Grundrechte der Europäischen Union verankerten Grundsätze. Mit dem Rahmenbeschluss sollen insbesondere das Recht auf Freiheit, das Recht auf ein faires Verfahren und die Verteidigungsrechte gefördert werden.

(14) Da das Ziel der Festlegung gemeinsamer Mindestnormen durch einseitige Maßnahmen der Mitgliedstaaten nicht erreicht werden kann, sondern nur auf Gemeinschaftsebene zu verwirklichen ist, darf der Rat im Einklang mit dem in Artikel 2 des Vertrags über die Europäische Union und Artikel 5 des Vertrag zur Gründung der Europäischen Gemeinschaft niedergelegten Subsidiaritätsprinzip tätig werden. Gemäß dem ebenfalls in Artikel 5 des EG-Vertrags verankerten Grundsatz der Verhältnismäßigkeit geht der Rahmenbeschluss nicht über das für die Erreichung dieses Ziels erforderliche Maß hinaus—

HAT FOLGENDEN RAHMENBESCHLUSS ERLASSEN:

Artikel 1
Geltungsbereich

1. Der vorliegende Rahmenbeschluss regelt das Recht auf Verdolmetschung und Übersetzung in Strafverfahren und in Verfahren zur Vollstreckung eines Europäischen Haftbefehls.

2. Dieses Recht gilt für jede Person ab dem Zeitpunkt, zu dem ihr von den zuständigen Behörden eines Mitgliedstaats mitgeteilt wird, dass sie der Begehung einer Straftat verdächtigt wird, bis zum Abschluss des Verfahrens („verdächtige Person“).

Artikel 2
Recht auf Verdolmetschung

1. Um ein faires Strafverfahren zu gewährleisten, stellen die Mitgliedstaaten sicher, dass einer verdächtigen Person, die die Sprache des Strafverfahrens weder versteht noch spricht, ein Dolmetscher beigestellt wird. Die Pflicht zur Beiziehung eines Dolmetschers besteht während des Ermittlungs- und des Gerichtsverfahrens; hierin eingeschlossen sind polizeiliche Vernehmungen, alle erforderlichen Treffen zwischen der verdächtigen Person und ihrem Rechtsanwalt, sämtliche Anhörungen bei Gericht sowie alle zwischenzeitlich nötigen Anhörungen.

2. Die Mitgliedstaaten stellen sicher, dass einer verdächtigen Person gegebenenfalls während des gesamten Strafverfahrens ein Dolmetscher zur Verständigung mit dem Rechtsbeistand zur Seite gestellt wird.

3. Die Mitgliedstaaten halten ein Verfahren zur Verfügung, mit dessen Hilfe festgestellt werden kann, ob die verdächtige Person die Sprache des Strafverfahrens versteht und spricht.

4. Die Mitgliedstaaten stellen sicher, dass gegen den Beschluss, mit dem eine Verdolmetschung abgelehnt wird, Rechtsmittel eingelegt werden können.

5. Das Recht auf Verdolmetschung gilt auch für hör- und sprachgeschädigte Personen.

6. Wurde gegen eine Person ein Europäischer Haftbefehl erlassen, sorgen die Mitgliedstaaten dafür, dass ihr, wenn sie die Verfahrenssprache weder versteht noch spricht, während des Verfahrens ein Dolmetscher beigestellt wird.

Artikel 3
Recht auf Übersetzung maßgeblicher Unterlagen

1. Um ein faires Verfahren zu gewährleisten, stellen die Mitgliedstaaten sicher, dass eine verdächtige Person, die die Sprache des Strafverfahrens nicht versteht, eine Übersetzung aller maßgeblichen Unterlagen erhält.

2. Zu den maßgeblichen Unterlagen, die übersetzt werden müssen, gehören die Anordnung einer freiheitsentziehenden Maßnahme, die Anklageschrift, wichtiges Beweismaterial sowie das Urteil.

3. Die verdächtige Person oder ihr Rechtsbeistand können einen mit Gründen versehenen Antrag auf Übersetzung weiterer Unterlagen stellen, wozu auch der Verteidigung dienende Unterlagen des Rechtsbeistands der verdächtigen Person gehören können.

4. Die Mitgliedstaaten stellen sicher, dass gegen den Beschluss, mit dem die Übersetzung von Unterlagen der in Absatz 2 genannten Art verweigert wird, Rechtsmittel eingelegt werden können.

5. Wurde gegen eine Person ein Europäischer Haftbefehl erlassen, sorgen die Mitgliedstaaten dafür, dass diese Person, wenn sie die Sprache, in der der Europäische Haftbefehl ausgestellt wurde, nicht versteht, eine Übersetzung hiervon erhält.

Artikel 4
Übernahme der Dolmetsch- und Übersetzungskosten durch die Mitgliedstaaten

Die Mitgliedstaaten kommen für die in Anwendung der Artikel 2 und 3 entstehenden Dolmetsch- und Übersetzungskosten auf.

Artikel 5
Qualität der Verdolmetschung und Übersetzung

1. Verdolmetschung und Übersetzung müssen in einer Weise erfolgen, die es der verdächtigen Person ermöglicht, ihre Rechte in vollem Umfang auszuüben.

2. Um gewährleisten zu können, dass die verdächtige Person dem Verfahren folgen kann, müssen Richter, Rechtsanwälte und sonstige am Verfahren beteiligte Gerichtsbedienstete von den Mitgliedstaaten entsprechend geschult werden.

Artikel 6

Regressionsverbot

Keine Bestimmung dieses Rahmenbeschlusses ist so auszulegen, dass dadurch die Verfahrensrechte und -garantien nach Maßgabe der Europäischen Konvention zum Schutze der Menschenrechte und der Grundfreiheiten oder des Rechts einzelner Mitgliedstaaten, die ein höheres Schutzniveau vorsehen, geschmälert oder verändert würden.

Artikel 7

Umsetzung

Die Mitgliedstaaten treffen die erforderlichen Maßnahmen, um diesem Rahmenbeschluss bis spätestens ……[18] nachzukommen.

Innerhalb derselben Frist übermitteln die Mitgliedstaaten dem Rat und der Kommission den Wortlaut der Rechtsvorschriften, die sie zur Umsetzung der sich aus diesem Rahmenbeschluss ergebenden Verpflichtungen in ihr innerstaatliches Recht erlassen haben.

Artikel 8

Bericht

Die Kommission übermittelt dem Europäischen Parlament und dem Rat bis spätestens …….[19]. einen Bericht, in dem sie überprüft, inwieweit die Mitgliedstaaten dem Rahmenbeschluss nachgekommen sind, und unterbreitet gegebenenfalls Vorschläge für weitere Legislativmaßnahmen.

Artikel 9

Inkrafttreten

Dieser Rahmenbeschluss tritt am zwanzigsten Tag nach seiner Veröffentlichung im *Amtsblatt der Europäischen Union* in Kraft.

Geschehen zu Brüssel am

Im Namen des Rates
Der Präsident

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[18] 24 Monate nach seiner Veröffentlichung im *Amtsblatt der Europäischen Union*.

[19] 36 months after publication of this Framework Decision in the *Official Journal*.

COUNCIL OF THE EUROPEAN UNION

Brussels, 15 July 2009

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Interinstitutional File: 2009/0101 (CNS)

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COVER NOTE

from:	Secretary-General of the European Commission, signed by Mr Jordi AYET PUIGARNAU, Director
dated:	9 July 2009
to:	Mr Javier SOLANA, Secretary-General/High Representative
Subject:	Commission staff working document Accompanying the proposal for a Council Framework Decision on the right to interpretation and to translation in criminal proceedings - Impact Assessment

Delegations will find attached Commission document SEC(2009) 915.

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Encl.: SEC(2009) 915

COMMISSION OF THE EUROPEAN COMMUNITIES

Brussels, 8.7.2009
SEC(2009) 915

COMMISSION STAFF WORKING DOCUMENT

Proposal for a Council Framework Decision on the right to interpretation and translation in criminal proceedings

Accompanying the

Proposal for a

FRAMEWORK DECISION

on the right to interpretation and to translation in criminal proceedings

IMPACT ASSESSMENT

{COM(2009) 338 final}
{SEC(2009) 916}

COMMISSION STAFF WORKING DOCUMENT

Proposal for a Council Framework Decision on the right to interpretation and translation in criminal proceedings

SECTION 1: INTRODUCTION

1. The right of accused persons and suspects to a fair trial is a fundamental right which the European Union respects as a general principle under Article 6 (2) TEU. This right is specifically mentioned in the Charter of Fundamental Rights of the European Union (Article 47 - 'Right to an effective remedy and to a fair trial'). European citizens' confidence in other Member States' criminal justice systems could improve if fundamental rights were respected and seen to be respected throughout the EU. Legal practitioners and Member States agree that a prerequisite for mutual trust is that Member States' national criminal justice systems guarantee suspects and accused persons, whatever their nationality, minimum safeguards for a fair trial. This is particularly important in cross-border proceedings, in particular those covered by mutual recognition instruments, such as the European Arrest Warrant (EAW), through which a Member State is expected to surrender suspects or convicted persons, including its nationals, rapidly and without examination of the case file, for trial or to serve a custodial sentence in another Member State.

2. On 28 April 2004 the Commission presented a proposal for a Framework Decision on certain procedural rights in criminal proceedings throughout the European Union[1] ("the 2004 proposal"). After 3 years of discussion and despite widespread support, this proposal was not adopted. Six Member States opposed the measure on various grounds, including that the TEU did not provide a sufficient legal basis, that the EU's mandate was limited to cross border cases and that the European Convention on Human Rights offered adequate protection to those facing criminal charges throughout the EU (see further details below under "Political mandate"). However, action in this area remains a priority under the Hague Programme and a new proposal is envisaged by the Commission's Legislative Work Programme for 2009. This impact assessment evaluates the options for this proposal.

SECTION 2: POLITICAL MANDATE, LEGAL BASIS, AND CONSULTATION OF INTERESTED PARTIES

2.1 Political mandate and legislative history

Political mandate

[1] Framework Decision on certain procedural rights applying in proceedings in criminal matters throughout the European Union COM (2004) 328 of 28.04.2004

3. A proposal on procedural rights is one of the priority initiatives of the CLWP 2009, but the context in which a legislative proposal is brought forward needs to be considered carefully, given in particular the dossier's history.

4. The rights of the defence were explicitly mentioned in the Tampere European Council Conclusions[2] and have always been an integral part of the EU's mutual recognition agenda. The introductory section of the 2001 Mutual Recognition Programme[3] points out that "*mutual recognition is very much dependent on a number of parameters which determine its effectiveness*". These parameters include "*mechanisms for safeguarding the rights of […] suspects*" (parameter 3) and "*the definition of common minimum standards necessary to facilitate the application of the principle of mutual recognition*" (parameter 4).

5. The Hague Programme, adopted on 5 November 2004, stated: "The further realisation of mutual recognition as the cornerstone of judicial cooperation implies the development of equivalent standards for procedural rights in criminal proceedings, based on studies of the existing level of safeguards in Member States and with due respect for their legal traditions. In this context, the draft Framework Decision on certain procedural rights in criminal proceedings throughout the European Union should be adopted by the end of 2005."

6. The Hague Programme seeks to strike a fair balance between a more effective and faster scheme of cross-border judicial cooperation in the European Union and the protection of fundamental rights affected by such proceedings. Clearly, judicial cooperation, as envisaged under Article 31, must not have the effect of eroding the rights of suspects and accused persons. Since 2002, numerous instruments have been adopted to facilitate and expedite investigation and prosecution of cross border cases[4]. For example, judicial cooperation between investigating and prosecuting authorities has been greatly enhanced by the creation of the European Judicial Network and of Eurojust, by the adoption of the 2000 Convention on Mutual Assistance in Criminal Matters and, most importantly, by the extension of the principle of mutual recognition to criminal proceedings.

7. As a result of these measures, judicial cooperation in criminal matters in the European Union has already become less formal and more standardised. Yet, to date no instrument exists to improve the legal position of those subject to cross-border proceedings and guarantee that they benefit from the same minimum rights to a fair trial in all EU jurisdictions. This lack of balance has a negative impact on mutual trust among the member States, which in turn calls for action by the EU. The EU should seek to enhance that trust and ensure that the rights of persons

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2 Tampere European Council Conclusion 30 (October 1999) invites the Council "to establish minimum standards ensuring an adequate level of legal aid in cross-border cases", Tampere Conclusion 31 refers to "multilingual forms or documents to be used in cross-border court cases" – the basis of Com's proposed "Letter of Rights". Tampere Conclusion 33 mentions facilitating "the judicial protection of individual rights". Tampere Conclusion 35 points out that the principle of a fair trial should not be prejudiced by fast track extradition procedures. Tampere Conclusion 40 seeks to develop measures against crime "while protecting the freedoms and legal rights of individuals"

3 OJ C12-15.01.2001

4 E.g. Framework Decisions on the European Arrest Warrant, freezing orders, confiscation orders, financial penalties and the European Evidence Warrant.

suspected and/or accused in criminal proceedings are safeguarded throughout the European Union.

Legislative history

8. In February 2003, the Commission adopted a Green Paper on procedural safeguards for suspects and defendants in criminal proceedings throughout the European Union. The Commission's suggested approach was not to create new rights but to give a higher profile to the specific fair trial rights laid down in the European Convention on Human Rights and other international conventions (e.g. ICCPR[5]), in order to promote better and more consistent compliance with that convention, and thus increase mutual trust.

9. Following the Green Paper, in April 2004 the Commission adopted a proposal for a Framework Decision on certain procedural rights applying in proceedings in criminal matters throughout the European Union, focusing on "basic rights" identified in the Green Paper. The Commission relied on Article 31 (1) (c) TEU[6] as the legal base. The proposal was based on the assumption that having common minimum standards of procedural rights will increase mutual trust and thus improve mutual recognition. The original proposal for a Framework Decision covered rights in the following 6 areas: 1) access to legal representation, both before the trial and at trial; 2) access to interpretation and translation; 3) ensuring that vulnerable suspects and defendants in particular were properly protected; 4) consular assistance to foreign detainees; 5) the right to communicate to a family member the fact of being in detention; 6) notifying suspects and defendants in writing of their rights in a document called the "Letter of Rights".

10. Discussions in the DROIPEN Working Group started in September 2004. At the outset, some Member States raised the question whether Article 31 (c) TEU provided an adequate legal base. The Council Legal Service was asked for an Opinion on the question; it gave a positive Opinion endorsing the Commission's approach (see details below under 'Legal Basis').

11. While most Member States supported the proposal, and indeed had declared themselves in favour of an EU instrument during the Green Paper consultation, one Member State declared firm opposition at an early stage and opposed the proposal on two grounds, that there was no legal base – it did not accept the CLS Opinion - and that there was no need for such a proposal since all Member States were signatories to the ECHR so standards for criminal proceedings were already protected within the EU. Some other aspects of the proposal were deemed unworkable by certain Member States. This included the evaluation and monitoring requirement which was deleted at an early stage. Other deletions

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5 Article 9, International Covenant on Civil and Political Rights, adopted and opened for signature, ratification and accession by General Assembly resolution 2200A (XXI) of 16 December 1966; entry into force 23 March 1976

6 Art 31(1):"Common action on judicial cooperation in criminal matters shall include:

[…]

(c) ensuring compatibility in rules applicable in the Member States, as may be necessary to improve such cooperation;

included the obligation to record (by audio or video means) the interviews between the police and the suspect. The provisions on protection for vulnerable suspects, consular assistance and the right to communicate with a family member to inform them of the fact of being in detention were also subject to difficulties.

12. Despite the above difficulties, substantial progress was made by end December 2005 (The Hague Programme deadline) and the relevant Council Working Group seemed close to reaching an agreement. However during the first half of 2006 another Member State announced its opposition to the text and, shortly thereafter, 4 further Member States declared that they could not support the proposal either. While negotiations continued, the group of - by then - 6 Member States announced in May 2006 that they did not want a binding text at all and put forward a draft (non-binding) Resolution. The Commission, in agreement with the majority, argued that a binding instrument was essential since for rights to be meaningful, they have to be enforceable in court.

13. In 2007 every effort was made to accommodate the 6 Member States. The Presidency drafted a new text, reducing the rights covered to: 1) legal advice; 2) interpretation (and a limited right to translation of essential procedural documents); and the right to information about rights (to be transmitted orally rather than through a Letter of Rights). One of the opposing Member States announced that it could only support a proposal limited to EAW cases, and an alternative text reflecting this limited scope was drafted by the Presidency but this was also rejected by another Member State. The option of a non-binding Resolution was also discussed, but the majority of Member States still favoured a binding instrument. Discussions continued until June 2007 including the possibility of using the enhanced cooperation mechanism (Art 40 TEU).

14. The revised text was presented to the June 2007 Justice and Home Affairs Council, with its variations and also two draft articles with the possibility of an opt-out, or an opt-in (a limited "cross-border" text with the possibility for those Member States wishing it to extend to all cases). Agreement could not be reached and the text was shelved.

15. In view of the failure to reach agreement on the Commission's 2004 proposal, it is clear that a new approach is needed.

2.2 Legal basis and existing instruments

16. The power to act and, where necessary, propose EU legislation in the area of criminal law is conferred, *inter alia*, by two articles of the TEU. First, Article 29 TEU provides a general legal base:
"…the Union's objective shall be to provide citizens with a high level of safety within an area of freedom, security and justice by developing common action among the Member States in the fields of police and judicial cooperation in criminal matters and by preventing and combating racism and xenophobia. That objective shall be achieved through: …
- *approximation, where necessary, of rules on criminal matters in the Member States, in accordance with the provisions of Article 31(e).”*

17. In addition, Article 31 provides a more specific legal base: "Common action on judicial cooperation in criminal matters shall include: *(c) ensuring compatibility in rules applicable in the Member States, as may be necessary to improve such cooperation;*

18. The Commission's proposal was based on Article 31(1)(c) TEU. As during the negotiations on the Commission's 2004 proposal at least one Member State expressly challenged the legal base chosen for that proposal, on 30 September 2004 the Legal Service of the Council of the European Union issued an opinion[7] on the matter. In this opinion[8] the Council's Legal Service confirmed that Article 31(1)(c) was the appropriate legal base. Specifically, the opinion stated that "The Legal Service considers that the Commission proposal is correctly based on Article 31(1)(c) of the TEU and that the Council can adopt the proposed measures if, in compliance with the principle of subsidiarity, it considers that they do not go beyond what is necessary to improve judicial cooperation in criminal matters."

2.3 Organisation and timing

19. The Commission hosted an experts' meeting on procedural rights on 26 and 27 March 2009 involving practitioners and representatives of Member States (the Report is in Annex 2) to discuss whether and if so what action was needed in this area at EU level, particularly on the question whether such action should be limited to cross-border cases only. Most responses favoured legislative action, to be accompanied by non-legislative measures, as necessary in addressing the lack of progress in the area of mutual trust and mutual recognition. As far as the scope is concerned, the overwhelming majority of participants' opposed limiting the proposal to cross border cases (only 1 delegate spoke in favour of this idea). See below at paragraphs 79-87 for a discussion of cross border cases.

20. The planned proposal should be adopted by the Commission in July 2009. The reasons why it is not desirable to wait until it is known whether the Lisbon Treaty will come into force are set out in paragraph 101 in the section below on Options. Several recent studies (ULB MR study, see paragraph 24 below and footnote 11) and conclusions of meetings (Justice Forum, experts' meeting on procedural rights), confirm that further progress with the EU's common area of justice, based on the mutual recognition of judicial decisions, requires that work on procedural rights resumes - urgently - in the Council. The incoming SE presidency has made procedural rights one of their priorities. At this stage, given the constraints, only a step-by-step approach is realistic and feasible. Nothing would prevent the Commission from accelerating work on the remaining rights after the Lisbon Treaty enters into force.

2.4 Consultation and expertise

Regarding the original 2004 proposal

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7 COPEN 117

8 See Annex 1

21. For the original 2004 proposal, extensive consultation was carried out using various methods. Since the factors which indicated that EU legislation in this area was necessary still apply, we reiterate briefly the findings of the research and consultation carried out in order to prepare that earlier proposal. The first step was the posting of a Consultation Paper on DG-JLS (then DG-JHA)'s website in January 2002 to which about 100 responses were received. A questionnaire was sent to the Ministries of Justice of the Member States and an experts' meeting held in October 2002. A Green Paper was published in February 2003 and all interested parties were invited to submit their comments in writing and to attend a public hearing held in June 2003. Each of these consultation exercises showed a high level of support for EU legislation in this area.

22. In 2006, during the discussions on the Commission's 2004 proposal, the Council of Europe, and in particular the secretariat of the European Court of Human Rights, was consulted about its possible support for an EU instrument in the area of rights. In its opinion[9] the Council of Europe broadly supported EU action in this field stating *"The Council of Europe fully recognises the importance of common minimum standards in procedural rights as a necessary precondition for mutual trust in the legal systems of EU member States. […] The Council of Europe is ready to cooperate with the EU institutions and member States to ensure that the framework decision will enhance fundamental rights protection in Europe, which, as stated, is a common goal of the European Union and of the Council of Europe."* It also stated that it "*would welcome practical measures to improve compliance with ECHR standards which would strengthen mutual trust, thereby enhancing the operation of mutual recognition and judicial cooperation in criminal matters, not only within the European Union, but all over Europe."*

Regarding the revised 2009 proposal

23. In preparing this Impact Assessment, the Commission has drawn on a number of additional sources of information, including the following 5 studies:

(1) **The study 'Status Quaestionis'**[10]: Questionnaire on the Provision of Legal Interpreting and Translation in the EU was carried out by means of an EU wide questionnaire. The questionnaire was sent both to governmental bodies (Ministries of Justice) and to practitioners (Bar associations, interpreters, translators, academics teaching interpretation and translation) with questions about, *inter alia*, training, cost of provision of the service, standards of provision and mechanisms in place to ensure quality control. Government bodies from 13 Member States replied. For 13 other Member States data were obtained only from non-governmental sources. No responses were received at all from 1 Member State. The results were analysed on the basis of certain indicators in order to assess the provision of legal interpretation and translation, starting with training offered and including frequency of provision of interpretation and translation in criminal proceedings. Other indicators were whether there is a system of quality control and any regulation of the profession. The study includes statistics on the number of

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9 DROIPEN 62 of 10/10/2006

10 *Status Quaestionis*: Questionnaire on the Provision of Legal Interpreting and Translation in the EU, AGIS project JLS/2006/AGIS/052 – by Erik Hertog and Jan Van Gucht

cases dealt with by the public prosecutor per 100,000 inhabitants. The findings of this study are summarised in tables in Annex 5.

(2) **The 'Analysis of the future of mutual recognition in criminal matters in the European Union'**[11], carried out by the Université Libre de Bruxelles (ULB) and finalised in November 2008, followed a two-stream approach. National correspondents of ULB's European Criminal Law Academics Network (ECLAN) carried out research in their home Member State and drafted a national report based on in-depth research and interviews with experts and practitioners (after completing a questionnaire). The researchers then carried out a horizontal analysis comparing with the Member State analysis to identify common themes. The findings were examined further in interviews with more than 150 experts and practitioners, including civil servants of ministries of justice responsible for the negotiation and transposition of mutual recognition instruments, judges, defence lawyers, liaison magistrates, prosecutors and others.

(3) **The Final Report of the Reflection Forum on Multilingualism and Interpreter Training**, published by DG Interpretation in March 2009[12] made recommendations for best practice and quality improvement in legal interpreting. DG JLS participated in the work of the Reflection Forum which met several times during 2008 and 2009. The Report is comprehensive, with a section setting out the present situation, background and relevant developments (including DG-JLS's 2003 Green Paper on Procedural Safeguards[13] and 2004 proposal for a Framework Decision on certain procedural rights applying in proceedings in criminal matters throughout the European Union). The report has sections on training, on adopting a professional Code of Conduct and guidelines for good practice, working arrangements, implementing an efficient structure of legal interpreting and concluding recommendations.

(4) **The Study by the Maastricht University on existing safeguards in all Member States**[14], published in December 2005, showed a wide discrepancy in standards and differing levels of compliance with the European Convention on Human Rights (ECHR), was. In 2008, the Commission issued an invitation to tender for a study updating the 2005 Maastricht study. Maastricht and Ghent Universities submitted a successful joint tender and are currently carrying out the updating study, the results of which will be available in July 2009.

(5) **Effective Criminal Defence Rights in Europe**, a study funded in part under the Criminal Justice Programme is a joint initiative of JUSTICE, the University of the West of England, the Open Society Justice Initiative and Maastricht University. It will be carried out over a 2 year period (2008-2010) and provide

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11 "Analysis of the future of mutual recognition in criminal matters in the European Union" by Gisèle Vernimmen-Van Tiggelen and Laura Surano (*Call for tenders JLS/D3/2007/03 European Commission*) – 20 November 2008

12 http://ec.europa.eu/commission_barroso/orban/docs/FinalL_Reflection_Forum_Report_en.pdf

13 COM(2003) 75 final of 19.2.2003

14 The study, "Procedural Rights in Criminal Proceedings: Existing level of safeguards in the European Union" was carried out for DG-JLS by Taru Spronken and Marelle Attinger (Faculty of Law, Department of Criminal Law and Criminology, University of Maastricht) on 12 December 2005.

empirical information on the extent to which procedural rights that are indispensable for an effective defence, such as the right to information, the right of access to a lawyer and the right to an interpreter, are provided in practice in 8 EU Member States and one accession country (Turkey)[15]. The reports for Belgium, England and Wales and Hungary have been completed.

Consultation of stakeholders

24. Prior to the 2004 proposal's adoption, extensive consultation was carried out (see paragraph 22 above). The position of stakeholders has not changed since that consultation exercise (we have regular and frequent contact with our major stakeholders :European Criminal Bar Association, CCBE – Council of Bars and Law Societies of Europe -, national Bar associations, academics working in the field, NGOs such as JUSTICE, Amnesty International and Fair Trials International, the European Parliament and international networks of translators and interpreters). At a Justice Forum meeting in July 2008 at which ULB's study on mutual recognition was discussed, the overwhelming majority of participants expressed their continuing wish to see legislation at EU level on procedural safeguards. The Justice Forum was constituted with the aim of providing an arena in which the Commission could consult its stakeholders. In relation to this initiative, general principles and minimum standards for consultation of interested parties have been followed.

Impact Assessment Board

25. The Impact assessment was examined by the Impact Assessment Board on 27 May 2009. Further to the IAB's recommendations, additional information and data was provided. At the IAB's request, more details about timing in relation to the Lisbon Treaty were given (paragraph 21), further costs estimates were added (Table 6 in Annexe 4 was added and paragraphs 74-76 were developed) and the problem definition was refined (paragraphs 32-35) to show why mutual trust is so important, what factors affect it and how to enhance it. The IAB asked for a better explanation about cross border cases and why these are difficult to define. Therefore, the section on Option 4, a proposal limited to cross border cases (paragraphs 82-91), was amplified in order to clarify the problem. The Options table (Section 8) was refined to indicate better the effectiveness, efficiency and consistency of the options with defined policy objectives, and the political feasibility of each option was assessed. Finally, more information about consultation of stakeholders was added (paragraph 25) to show how extensive the consultation had been and that the exercise fully complied with general principles and standards for consultation.

SECTION 3: PROBLEM DEFINITION

26. The problem, which has various legal and social aspects, can be summarised as follows:

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[15] The research project will cover nine countries: Poland, Hungary, Belgium, France, Italy, Germany, England and Wales and Finland and an accession state (Turkey).

- Increased movement within the EU, outdated provisions and inconsistent application of existing international standards (ECHR) at MS level result in an increasing number of cases where the accused are not fully aware of their rights, the charges against them, and the procedures which are to be applied.

- In turn, there is a perception among citizens and practitioners that justice systems in Member States other than their own are unfair, that they cannot obtain remedy at international level as the European Court of Human Rights is swamped with complaints.

- Ultimately, this problem hinders the development of a European area of justice as the implementation of the mutual recognition principle presupposes that MS have trust in each others' criminal justice systems.

- Under the mutual recognition principle, Member States are expected to surrender their nationals for trial or to serve custodial sentences in prisons in another Member State. Judicial authorities are expected to recognise a foreign judicial decision as being "equivalent" to one taken in their own Member State. This can only work effectively if they are convinced that judicial decisions are taken fairly in other Member States, assuming that the relevant standards for fair trial rights were respected. Currently, this is not always the case and this harms mutual trust. In some cases lack of trust reaches a level where Member States refuse to execute foreign judicial decisions based on various grounds for refusal, including some not foreseen in European legislation. If there were common minimum safeguards, judicial authorities would be more comfortable executing a foreign judicial decision in the knowledge that the person affected by the decision had access to interpretation, translation, legal advice, a reasonable time to prepare their defence and other rights to be guaranteed at a minimum level throughout the EU.

- Practitioners point to an imbalance in the acquis between the numerous measures to facilitate and expedite the prosecution of criminals (EAW, judicial and police cooperation) and the absence of measures to protect the rights of the accused.

- The most pressing aspect of this problem, according to practitioners and stakeholders, is the fact that the accused is not guaranteed access to appropriate translation and interpretation services. The extent of the problem is still unclear as Member States do not monitor the numbers of persons accused in other EU jurisdictions and who do no understand the official language[s] of the MS in question. No statistics are available; therefore the problem in most Member States remains latent. Case studies are however available. Studies[16] confirm the widespread view among practitioners[17] that the current situation hinders the

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16 See Procedural Rights in Criminal Proceedings: Existing Level of Safeguards in the European Union, by Taru Spronken and Marelle Attinger, Faculty of Law, Department of Criminal Law and Criminology University of Maastricht, pages 35 - 52

17 See submissions by practitioners to the Experts' Meeting organised by the European Commission on 26 – 27 March 2009, in particular a joint submission by Open Society, Amnesty International and Justice (available at

development of mutual trust, a prerequisite for the mutual recognition which is the cornerstone of the European area of justice.

27. Minimum standards for implementing the ECHR come not just from the ECHR itself but also from the case law of the European Court of Human Rights (ECtHR).There are now 47 states bound by the ECHR. They joined the ECHR mechanism at different times and in different circumstances. It is possible that different States understand ECHR obligations differently. Violations would seem to occur in part because States do not have sufficient mechanisms in place to ensure that the ECHR is observed in practice and in part because States do not always comply with judgments finding that they have committed violations by changing their system.

28. The ECHR was drafted in 1950 and came into force in 1953, at which time only 3 Contracting States recognised the competence of the ECtHR to hear applications from individuals (rather than interstate applications). It was only in 1998, when Protocol 11 to the Convention, came into force that it became compulsory to recognise the right of individual petition. The obligation to recognise the competence of the ECtHR is therefore a fairly recent development. The fact that there are no agreed minimum standards, that the obligation to recognise the ECtHR is a recent one and that States have joined at different times may explain to a certain extent the continued violations of the ECHR.

Why not include the rights of victims?

29. The rights of victims are clearly connected with the rights of suspects/accused, as these two categories of persons are key players in any criminal proceedings (unless the crime is "victimless"). A fair trial implies fair treatment of both categories. Yet, their rights are quite different in substance (Article 6 ECHR only protects defendants) and legislation on the rights of victims already exists under EU law (Framework Decision 2001/220/JHA on the standing of victims in criminal proceedings as well as Council Directive 2004/80/EC on compensation to crime victims). While the implementation of these two EU instruments is far from adequate in the Member States (see implementation reports of 20 April 2009), they already provide a degree of protection for victims in the EU.

Problem 1 – Absence of minimum standards hampers mutual trust

30. Mutual trust is presumed in the EU's strategic intention to create a European judicial area. Experts across the EU report however that this trust has not developed in the absence of common traditions and procedures, and of legal remedies for the person affected by existing mutual recognition measures. Where however, cultural and historic ties are strong, such as in the Nordic countries, trust and cooperation between jurisdictions is more advanced[18]. As the ULB study

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http://www.ecba.org/extdocserv/projects/ps/Submislegalbasisprocrightsframework.pdf) as well as the minutes of the meeting (see Annex 2)

[18] See http://www.eu2009.cz/fr/media-service/video/informal-meeting-of-ministers-for-justice-and-home-affairs-press-conference;-ministers-of-justice--6574/

demonstrates, the lack of balance between the interests of the prosecution and those of the defence acts as a further barrier to trust[19].

31. The point made about lack of trust among the Member States and this being related directly or indirectly to the lack of harmonisation of minimum procedural rights is regularly made in various fora, including in the JHA Council.

32. When the ECHR was drawn up in 1950, cross-border communication, travel, crime and judicial cooperation and mutual recognition were rare. Article 6 of the ECHR, which lays down fair trial guarantees, was not designed with present levels of cross border crime in mind. Mutual recognition measures, such as the EAW or the European Freezing Order, have changed the nature of cross border criminal proceedings but the concomitant rights have not been specifically addressed and the rights set out in Article 6 ECHR were not designed to offer safeguards in this type of proceedings. Case-law of the ECtHR shows that violations of Article 6 rights occur in all Member States.

33. The high number of cases[20] alone before the ECtHR relating to Article 6 suggests that these rights are not always respected (in 2008, there were 8172 judgments finding that a violation had occurred of which 6000 related to violations of Article 6)[21]. There is currently a backlog of 104,100 cases at the European Court of Human Rights of which 25,100 related to Article 6[22]. Furthermore, the ECtHR can provide a remedy for violations of Article 6 only after the event.

Problem 2 -- Not understanding the proceedings may raise an issue of fair trial

34. The absence of a specific EU instrument providing minimum standards applicable to suspects in cross-border proceedings could lead to a perception that the EU does not sufficiently promote minimum standards of justice across the Member States. The ECHR provides that a person facing a criminal charge must be informed in a language which he understands of the nature and cause of the accusation against him and must have the free assistance of an interpreter if he cannot understand or

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19 ULB Mutual Recognition Study, page 15

20 "This system is a victim of its own success. Not only does the Court receive a steady stream of cases, the rising tide of applications now threatens to overwhelm the Court. A brief survey of annual rates of activity in this area is revealing. The European Commission of Human Rights received 49 individual applications in the decade of the 60's, 163 in the 70's, and 455 in the 80's. With the enlargement and entry into force of Protocol no. 11, the numbers have exploded. In 1998, the Registry of the Court received 18,200 individual applications, a figure that has increased every year thereafter, to 50,500 in 2006. Although some 98% of all applications will be determined to be inadmissible for one reason or another, the Court is nonetheless overloaded. Today there are nearly 100,000 applications, in the post-admissibility phase, pending before the organs of the Court. The delay between application and a decision on the merits, has now reached more than five years (though only 5% of applications judged admissible will reach the merits stage). The annual rate of judgments on the merits rendered by the Court shows a similar pattern. Through 1982, the Court had rendered, in its history, only 61 such rulings pursuant to applications by individuals. It issued 72 such rulings in 1995; 695 in 2000; 1,105 in 2005; and 1,560 in 2006." Introduction: The Reception of the ECHR in National Legal Orders by Alec Stone Sweet and Helen Keller

21 ECtHR annual report for 2008: http://www.echr.coe.int/NR/rdonlyres/FF6B92F9-44FA-402F-8D86-A2507A1C3BC2/0/Rapport_annuel_2008.pdf

22 Figure provided by the Council of Europe liaison office in Brussels.

speak the language spoken in the court. There are also similar provisions in Article 14 (3) of the International Covenant on Civil and Political Rights. These rights apply to citizens as much as to non-citizens. Article 5(2) provides that everyone who is arrested must be informed promptly in a language which he understands of the reasons for his arrest and the charges against him.

35. Yet, as the *Status Quaestionis* study concluded, "… [the survey] shows that sufficient legal interpreting and translation skills and structures are *not yet* in place to meet the goals that all individuals, irrespective of language and culture, have their procedural rights respected in each Member State"[23]. This conclusion is based on an assessment using various indicators by the project and ranking 14 Member States' performance on a scale from 0 to 100, i.e. from low to high. In half of the Member States, the survey concluded, compliance with the rights to interpretation and translation is low.

36. The existing standards under international law are unevenly complied with, even in the European Union[24]. If someone is subject to criminal proceedings in another Member State, there is risk that that person will not be treated in the same manner as nationals would be. Hence the growing perception, as evinced by articles in the press (e.g. the "Planespotters" case[25] or the Michael Shields case[26]), that foreign suspects will not receive justice.

37. Over the years, many similar cases have been brought to light by organisations such as Fair Trials International (http://www.fairtrials.net) and by the national reports of the Committee for the Prevention of Torture[27] (http://www.cpt.coe.int). This perception of unfair treatment can be for a variety of reasons such as not having the cultural and legal knowledge of another country to understand what is going on and to assert one's rights, and not understanding the language of the proceedings[28]. The following cases, both investigated recently by Fair Trials International, illustrate the difficulties faced by suspects involved in criminal

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23 *Status Quaestionis*: Questionnaire on the Provision of Legal Interpreting and Translation in the EU, AGIS project JLS/2006/AGIS/052 – by Erik Hertog and Jan Van Gucht, pages 2 and 189

24 See applicable national provisions and practices at pages 35-52 of the Study Procedural Rights

25 See case description at http://www.guardian.co.uk/world/2001/nov/18/greece and follow-up at http://groups.yahoo.com/group/balkanhr/message/4810 ;

26 See case description at http://www.freemichaelshields.com/

27 For example, the 2007 CPT report on Greece states (paragraph 42): "As was the case in 2005, many persons in police detention complained that they had not been informed about their rights. In the holding centres for aliens, similar allegations were made; where information sheets had been distributed, detainees stated that they were in a language they could not understand and their content had not been explained to them." As a result, the CPT noted in general that "Rights for persons deprived of their liberty will be of little value if the persons concerned are unaware of their existence. Consequently, it is imperative that persons taken into police custody are expressly informed of their rights without delay and in a language which they understand. In order to ensure that this is done, a form setting out those rights in a straightforward manner should be systematically given to persons detained by the police at the very outset of their custody. Further, the persons concerned should be asked to sign a statement attesting that they have been informed of their rights", see The CPT standards, "Substantive" sections of the CPT's General Reports, CPT/Inf/E (2002) 1, Rev. 2006

28 See references to FTA cases also in UK's Parliament enquiry into Procedural Rights at : http://www.parliament.the-stationery-office.co.uk/pa/cm200607/cmselect/cmhaff/76/7606.htm#n149

proceedings abroad. Here, we have deleted the names and the Member States concerned since the aim is to illustrate the problem rather than to draw attention to any Member States in particular.

Case 1 – RD

RD is a national of Member State A who was arrested in October 2005 by the Tourist Police in Member State B. He is a semi-retired computer programmer and computer programming teacher. He also works as a consultant, developer and teacher. He has been disabled since contracting West Nile Virus two years ago. He moved to Member State B with his wife in January 2005.

In October 2005, the tourist police came to his house and questioned him about some emails advertising pharmaceuticals. They suspected him of having sent them. The policemen would not identify themselves, refused to advise him of his rights or show any search warrant. They did show him three email printouts which did not include enough information to trace them. Two of the emails appeared to come from one of the world's leading marketing information companies, based in the US. The email was clearly not actually sent by them and in any event, RD has no connection to this company. The other email was from RD to a lady who is a national of Member State B. There was no mention of any pharmaceuticals.

The police arrested RD and took his computer. He did not have to go to prison on account of his poor health. The next day he read in the local paper "national of Member State A arrested for drug trafficking" (RD is the only national of Member State A in the area) and that the tourist police had arrested a key figure in an international drug trafficking ring. It has become apparent that the person who complained to the police did so after meeting RD , as she and two of her friends then began to receive 'spam' emails offering pharmaceutical drugs. The emails do not appear to come from or lead to RD, his websites or his email address. They bear no relation to RD's enterprises. This case has to be seen in connection with strict law enforcement in Member State B concerning technology. In 2002, the authorities of Member State B passed a law banning all electronic games, in an attempt to stamp out illegal gambling. The law resulted in internet cafes being closed down and people playing games on their mobile phones been sent to jail for a year.

Fair trial issues

1. When RD was interviewed, no lawyer was present. He was told that he did not need a lawyer and that the police had not come to arrest him.

2. **RD was forced, under threats of being imprisoned, to sign a document which he did not understand as it was not in his language.**

3. More than a month after taking his computer, the authorities still had not requested any information regarding the administrator password, which they would need to access all the information on the computer.

FTA Case 2 – MW

MW is a 48-year-old citizen of Member State A. He is a self-employed carpenter. On 10 November 2003, he was arrested in Member State B on a stopover on his way home from a holiday in Brazil and was charged with trafficking cocaine. On 22 April 2004 he was found guilty and sentenced to 6 years in prison. MW had checked his bags in at Sao Paulo airport and did not expect to have any contact with them until arriving at his destination in Member State A. He had no hand luggage and carried only a book to read on the flight.

When MW was arrested, he was taken into an interrogation room and shown one of his bags, which lay on a table with all identification tags missing. He was asked to open the bag and when he did so, he found that his clothes were in disarray but nothing was actually missing. In the bag was a folder containing many forms of identification (credit cards, cheque books etc.). Then he was shown a large package which had allegedly been in his bag. He refused to hold or touch this package to avoid leaving his fingerprints on it. Police later claimed that they had found two smaller packages in his bag as well.

While being interrogated, MW informed the officers of his other checked-in baggage, which they retrieved. This bag still had all its security tags and labels attached and no drugs were found in it. Both the drugs and the bag, in which they had supposedly been found, were said to have been destroyed before the case came to trial. Only photographs of the packages allegedly containing drugs and the bag itself were produced in court. A witness claimed that he had found the bag abandoned in the airport.

During the trial, the prosecutor portrayed MW as a "career criminal", which is entirely untrue. The judge was presented with an Interpol record stating that MW is a valued member of the community, however he chose not to take accept this letter as evidence. MW was offered a reduced 5 year sentence if he admitted his guilt, which he refused. He was found guilty and appealed; however the sentence was not changed. A further appeal has been submitted to the Supreme Court. If this fails, there will be an application to the European Court of Human Rights.

Fair trial issues

1. MW was denied access to both a lawyer and to consular officials despite several requests in the days following his arrest.

2. His request to have the contents of his two suitcases weighed, in order to be compared with the weight of the suitcases when they were checked in Sao Paolo, was refused without explanation.

3. At his first court appearance, he had not slept for over 50 hours. **He was only allowed five minutes with his court-appointed lawyer, who did not speak his native language** . At this hearing the prosecution told the court that MW was found in possession of 3 plastic packages containing cocaine, hidden inside his suitcase. **MW was not able to refute this statement because nothing was translated for him**. The translator told him that as she was employed by the court, she was only allowed to speak on the court's instructions.

4. The judges allowed the prosecutor to guide his two witnesses through their statements. Both witnesses had been in the courtroom from the beginning, and again no part of their statements or the evidence they gave was translated for MW,

making it impossible for him to instruct his lawyer for cross-examination. The judge also refused to admit statements MW submitted because they were in his native lanagueg. No-one was available to translate them into the language of the court. The judge did not suspend the trial in order to have them translated.

5. There was no forensic evidence to confirm that the packages contained drugs.

6. Defence counsel did not attend the sentencing hearing on 29 April 2004. MW took the opportunity to submit his own statements, which he had had translated into the language of the court. The judges refused to admit these statements, deeming them to have been submitted too late.

38. Insufficient provision of interpretation and translation in criminal proceedings is one of the immediate problems faced by citizens who find themselves arrested, and possibly charged, with a criminal offence, in a country in which they do not understand the language. They are at a disadvantage in relation to a national of that country. As the above cases illustrate, the right to understand the proceedings, in particular the right to interpretation and translation is a fundamental right for any suspect involved in criminal proceedings and may influence the extent to which other rights to a fair trial may be effectively exercised by the suspect.

39. Preliminary findings of the Maastricht/Ghent study also show that suspects who do not speak or understand the language of the proceedings are at a clear disadvantage. The scope of the right to interpretation and translation extends to all parts of criminal proceedings. The interpretation must be sufficient in quality and scope as outlined by the ECtHR in the *Kamasinksi* case (A168) 76-77 (19 December 1989). Although not explicitly mentioned in the ECHR, the right to free translation of documents which the defendant needs to understand in order to have a fair trial is established in ECtHR case law.

40. The Effective Criminal Defence Rights in Europe Project[29] finds that as regards translation and interpretation of the proceedings, none of the countries studied so far (Belgium, Hungary, England and Wales) have specific regulations or standards for persons acting as interpreters and translators in criminal proceedings or mechanisms to safeguard quality of interpretation. In Belgium, the defendant must sign to certify that the translation was adequate but cannot know whether it was adequate or not. In Belgium and in England and Wales there are no sanctions if interpretation or translation is not provided. Owing to a restrictive interpretation of the law by the Supreme Court, in Belgium the right to translation of procedural documents applies only to mono- or bilingual Belgians or to those whose native language is one of the three official Belgian languages. In England and Wales, there is no procedure for determining whether translation is necessary, for arranging translation or for determining who bears the cost.

41. As no standards exist, Member States do not keep statistics about cases in which suspects were unable fully to understand the proceedings. It is therefore difficult to assess the proportion of cases in which the right to interpretation and translation is

[29] http://www.unimaas.nl/default.asp?template=werkveld.htm&id=TTMXXC75LEDL3C10XH3X&taal=en

not respected. People who are prosecuted in proceedings in which they do not understand the language and are not given the help of a translator or interpreter are in a vulnerable situation and may not be aware of their right to bring an action before the European Court of Human Rights. Complaints received by the European Commission from citizens subjected to cross-border criminal proceedings seem to confirm that many of the cases where interpretation was not provided were not referred to the ECHR. In cases where an application is made to the ECHR on the ground that translation or interpretation was insufficient, it is often rejected by the Court if on balance the ensuing proceedings were not unfair as such. For example, the European Court of Human Rights has rejected MW's application.

Problem 3 - Individuals surrendered under the EAW are excluded from rights under Article 6 ECHR

42. The EAW raises a specific problem. The generally held view by human rights practitioners is that extradition cases within the EU are excluded from the ambit of Article 6 of the ECHR[30]. This is because Article 6 ECHR confers rights that apply during "criminal proceedings"; the extradition proceedings are not part of the ordinary criminal proceedings. Thus a person surrendered under a EAW who has not had the benefit of legal advice and/or interpretation in respect of the hearing in the executing State does not have a remedy at the ECtHR, but is left with the sole option of pursuing a domestic remedy in the country where he or she was arrested (and generally he no longer finds himself there since he has been surrendered to another country for the criminal proceedings proper). The following chart illustrates the number of cases that are potentially affected:

EAWs	**2005**	**2006**[31]	**2007**[32]
Issued	6900	6750	11.000
Persons traced and/or arrested	1770	2040	4200
Surrendered	1530	1890	3400
Nationals surrendered for prosecution in another	20%	25%	

[30] d) Expulsion and extradition

25. Procedures for expulsion of aliens do not belong to the criminal sphere of Article 6, notwithstanding the fact that they may be brought in the context of criminal proceedings (Maaouia v. France [GC], no. 39652/98, § 39, ECHR 2000 X). The same exclusive approach applies to extradition proceedings (Peñafiel Salgado v. Spain (dec.), no. 65964/01, 16 April 2002). See ECHR, Key case-law issues, COMPATIBILITY RATIONE MATERIAE, ARTICLE 6, (NOTION OF "CRIMINAL CHARGE"):

[31] 11371/4/07 rev 4; BE, DE, IT et SE n'ont pas fourni leurs données

[32] 10330/3/08 rev 3; BE, BG et IT n'ont pas fourni leurs données.

Member State		
Breach of 90 days time limit (number of cases)	80	122

43. Problems in the area of interpretation and translation are highlighted by the mutual evaluation reports33 adopted by the Council of the European Union on the EAW. Several reports stress the difficulty to comply with the short deadlines imposed by the legislation transposing the Framework Decision on the EAW and surrender procedures34.

SECTION 4: THE NEED FOR ACTION AT EU LEVEL

How would the problem evolve all things being equal?

44. The ULB study (see paragraph 24(2) and footnote 11) found that the efficiency of mutual recognition measures was being hampered by inadequate levels of mutual trust. As further mutual recognition instruments come into force, this may be exacerbated. Current EU initiatives which could have a positive impact on the situation centre largely on the promotion of networks of legal professionals and funded projects to help create trust. The Commission gives grants to the European Judicial Training Network, to the European Judicial Network, to the European Network of Councils of the Judiciary, to the European Criminal Bar Association and to Victim Support Europe. These networks all bring legal professionals together. Contacts of this type can promote trust since once judges and lawyers have met their counterparts from other EU Member States and learned about their criminal justice systems, they may have more faith in the operation of their systems, despite the differences. These networks do not have a direct impact on the experience of citizens who find themselves charged with crimes in Member States other than their own, nor do they in themselves give Member States the incentive to prioritise rights[35].

45. Without appropriate standards to protect the rights of suspects to understand proceedings and receive translation in cross-border proceedings there is a risk that the previously identified imbalance between prosecution and the accused could be further aggravated and ultimately run contrary to the interests of justice in the European Union. This problem has become significant with the increasing number of people involved in such proceedings. The overall trend indicates continued

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[33] Most reports can be found at: http://www.ulb.ac.be/iee/penal/mutualrecognition/national.htm or at http://www.eurowarrant.net/index.asp?c_nr=7

[34] See Evaluation report on the Fourth round of mutual evaluations "the practical application of the European arrest warrant and corresponding surrender procedures between member states", Report on Denmark, COPEN 106, page 14; and Report on Lithuania, COPEN 121, page 29.

[35] Articles 47-50 of the CFREU provide for fair trial rights but what is meant by these rights is not set out anywhere.

increases in the number of non-nationals charged with criminal offences in the EU (see Annex 5).

46. The Lisbon Treaty would bring about a substantial change in this area, in particular by creating a specific legal base for EU legislation on procedural rights. Article 82(2)c of the Lisbon Treaty provides a legal base for the approximation of laws, i.e. establishing minimum rules, in the area of "the rights of individuals in criminal procedure" by means of directives adopted in accordance with the ordinary legislative procedure. This means that the possibility of a blocking minority is much reduced. One or more of the Member States which led the opposition to the proposal, would be able to opt out of any new proposal under the Lisbon Treaty.

EU right to act /subsidiarity

47. The subsidiarity principle is intended to ensure that decisions are taken as closely as possible to the citizen. The principle of subsidiarity is defined in Article 5 of the Treaty establishing the European Community. Specifically, it is the principle whereby the Union does not take action (except in the areas which fall within its exclusive competence) unless it is more effective than action taken at national, regional or local level. It is closely bound up with the principles of proportionality and necessity, which require that any action by the Union should not go beyond what is necessary to achieve the objectives of the Treaty. The Treaty of Amsterdam incorporated the Protocol that requires a systematic analysis of the impact of legislative proposals on the principle of subsidiarity and proportionality.

48. To date, the Member States have complied, to differing degrees, with their fair trial obligations deriving principally from national law and the ECHR, which has led to discrepancies in the levels of safeguards. It has also led to speculation about standards in other Member States and on occasion there have been accusations of deficiencies in the criminal justice system of one Member State in the media of another. EU action in this area would therefore be required and could include the adoption of common minimum standards as an accompanying measure in an area of free movement of persons.

49. The right to a fair trial constitutes a fundamental right which the European Union respects as a general principle under Article 6 (2) TEU[36]. Member States must respect fundamental rights when they are acting within the scope of Community and Union law. This requirement is not only explicitly provided for in all 'third pillar' legal instruments, but is also recognised by the case-law of the ECJ. The EU by way of legislation could clarify the legal obligation of MS to comply with Article 5 ECHR (informing arrested persons in a language they understand of the reasons for the arrest and the charges against them) and to guarantee the right to a

[36] Case C-308/07 P *Koldo Gorostiaga Atxalandabaso*, 19 February 2009, para. 41 with further reference to Case C-305/05 *Ordre des barreaux francophone et germanophone and Others* [2007] ECR I-5305, paragraph 29, and Joined Cases C-341/06 P and C-342/06 P *Chronopost and La Poste v UFEX and Others* [2008] ECR I-0000, paragraph 44.

fair trial in the context of EU criminal law. Such a measure could make these rights and obligations more visible for EU citizens and public authorities.

SECTION 5: OBJECTIVES

50. The general objective is to increase mutual trust to allow better application of the mutual recognition principle, which is the cornerstone of the EU judicial area. Through increased mutual trust, existing European Union instruments on mutual recognition in criminal matters can be expected to work better and to have a real added value compared to the traditional inter-governmental cooperation instruments of extradition and mutual legal assistance.

51. The above general objective can be translated into the following specific objectives:
1) to provide common minimum standards for procedural rights in all criminal proceedings, including extradition (which is very rare within the EU now) and the EAW; and
2) to ensure that suspects, whether EU citizens or not, are informed of how they can benefit from these common minimum standards wherever they are within the European Union.

SECTION 6: DESCRIPTION OF POLICY OPTIONS

52. The five options for addressing these objectives are set out below.

Option 1: Status quo

53. If no further EU action is taken, the situation could be expected to evolve as set out above (see Section 4 above). This option is based on the assumption that Member States are at any rate expected to comply with the ECHR and provide minimum safeguards at least in domestic legal proceedings. That obligation remains whether the EU takes action or not.

Option 2: Promotion of non-legislative measures (best practices)

54. The 2004 proposal for a Framework Decision would be withdrawn and measures would be taken to promote the sharing of national best practices and developing EU guidelines on various aspects of procedural rights (training, provision of information about rights, dissemination of ECtHR case-law and obligations stemming from the case-law, exchange of registers for interpreters and translators competent to work in another EU Member State, electronic networking for defence lawyers). This option is based on the recognition that compliance with ECHR standards on fair trial rights is not fully achieved by all EU member States. This option would seek a better awareness of the ECHR standards by disseminating and recommending practices which help compliance with the ECHR. As such, it would not achieve any further approximation of legal standards. Should this option be taken, the following recommendations could be included in a document on best practices:

- Member States should provide information to citizens and practitioners on judgments of the European Court of Justice and of the European Court of Human Rights in Strasbourg concerning minimum standards of procedural rights in criminal proceedings, including the translation of suitable into official languages and their subsequent publication and dissemination, in particular on Internet homepages of the police and judicial authorities, to increase awareness of the European Convention for the Protection of Human Rights and Fundamental Freedoms,

- Member States should have available, and use, in their police stations, a Letter of Rights drafted in all the languages of the European Union, listing the essential rights of a person concerned.

- Member States should develop suitable, effective national standards for interpretation services (including sign language interpretation) in criminal proceedings; organise training for legal interpreters and translators in appropriate institutions.

- Member States should have a system of accreditation/certification for translators and interpreters employed in criminal proceedings and ensure that only accredited or certified translators and interpreters are used in criminal proceedings.

- Member States should operate a registration scheme for accredited or certified translators and interpreters whereby registration is reviewed [every 5 years] so as to encourage professionals to keep their language skills and knowledge of court procedures up to date in order to renew their registration.

- Member States should institute a system of Continuous Professional Development, so that legal translators and interpreters can keep their skills up to date.

- Member States should adopt a Code of Ethics or Conduct and Guidelines for Good Practice, which should be the same or very substantially similar throughout the European Union.

- Member States should ensure that a mechanism is in place to ensure quality control of the translation and interpretation used in criminal proceedings.

- Member States should ensure that a mechanism is in place to ensure that there is a minimum standard of remuneration for translation and interpretation in criminal proceedings.

Option 3: New instrument covering all rights

55. Withdrawing the failed proposal for a Framework Decision and reintroducing a proposal for a new instrument requiring Member States to provide minimum standards of procedural rights in a comprehensive manner, including standards on the right to information about one's rights (Letter of rights), access to legal advice and legal aid, access to interpretation and translation, protection for vulnerable

suspects and communication with consular authorities and with family or employers. This option is based on the assumption that the 2004 proposal was the appropriate instrument to approximate legal provisions in the Member States and that this legislation is still necessary with regard to the various aspects of procedural rights it had covered. It further assumes that the factors that have led to the failure of the 2004 proposal are no longer there.

56. For this option to succeed, a new treaty with an explicit legal base and a different (ordinary community law) legislative procedure would be required. While a new treaty would not resolve the problem of mutual trust in itself, it would facilitate the legislative process in the area of procedural rights. If legislation is successfully adopted, its subsequent implementation by Member States and monitoring by the European Commission – as well as, ultimately, by the European Court of Justice – will help overcome the differences in compliance with the ECHR. Practical measures, including those referred to previously (see section 4) may still be necessary to enhance mutual trust at practical level.

Option 4: Legislative measures restricted to the cross-border cases

57. As option 3, provision of the same range of rights but restricted to cross-border cases only. It is based on a gradual step-by-step approach, tackling what some consider to be the most important situation to address, namely cross-border cases, and in particular EAW cases. Proceeding with this option would clearly constitute a first step only but, if successful, it would contribute to enhancing mutual trust and help overcome resistance to further legislation. However, it will need careful consideration so that any potential issue of discrimination between categories of suspects involved in cross-border versus domestic proceedings is addressed appropriately.

58. There is no internationally recognised legal definition of "cross-border cases". Cases would generally involve several countries. This would be usually related to the fact that the national of one country is suspected of committing an office in another country, a situation which could give rise to investigation, prosecution and trial in at least one of those countries and the use of cooperation instruments and procedures, such as an EAW. The arrest and subsequent surrender of a person following an EAW from one EU member State to another would clearly qualify as a cross-border case.

Option 5: Step-by-step approach beginning with legislative measures on access to interpretation and translation services

59. Withdrawing the current proposal for a Framework Decision and proposing a new Framework Decision requiring Member States to provide minimum standards only for access to interpretation and translation services. The 2004 proposal contained a number of rights some of which were more controversial than others. More controversial rights, such as the right to legal advice, have been discarded at this stage because of concerns as to their political feasibility and uncertainty as to their costs to Member States.

60. This option would confirm that the right of access to a competent interpreter and translation of the key documents is fundamental so that the accused knows the charges against him and understands the procedure. The suspect or defendant must be in a position to understand of what he is accused. For that purpose, Member States must ensure that there are enough competent and qualified translators and interpreters to safeguard the full application of this right within their criminal justice systems. There should be training, not only linguistic but the necessary legal training, available to these professionals.

61. The legislative proposal – a Framework Decision - to be put forward under this option would contain the following provisions:

- **Scope of application:** The proposal would lay down rules concerning the rights to translation and interpretation in criminal and European Arrest Warrant proceedings. It would also include any appeal from these proceedings. The rights should apply to any person suspected or accused of having committed a criminal offence from the time when he is informed by the competent authorities of a Member State that he is suspected of having committed a criminal offence until finally judged.

- **The right to interpretation:** Member States would be required to ensure that a suspected person who does not understand the language of the proceedings is provided with interpretation in order to safeguard the fairness of the proceedings. Further, Member States would need to ensure that, where necessary, legal advice received throughout the criminal proceedings is interpreted for the benefit of the suspected or accused person receives.

- **Member States to meet the costs of interpretation and translation:** Member States would be required to cover the costs of interpretation during any police questioning, during all necessary meetings between the suspected or accused person and his lawyer, during all court hearings and during any necessary interim hearings. Similarly, they would have covered the costs of translation of the relevant documents.

- **The right to translation of relevant documents:** Member States would be required to ensure that a suspected or accused person who does not understand the language of the proceedings is provided with translations of all relevant documents in order to safeguard the fairness of the proceedings. The documents to be translated should include the detention order depriving the person of his liberty, the charge/indictment, essential documentary evidence on which the prosecution case is based and the judgment. Any decision about further translation should be taken by the competent authorities. The suspected or accused person's lawyer could ask for translation of further documents. Where documents put forward in evidence are not in a language understood by the suspected or accused person, translations of such documents will be made available to the suspected or accused person.

- **Member States to ensure training:** Member States would be required to ensure adequate training.

62. This option could vary in its scope and provide for these two rights to apply either a) in cross-border cases only (see possible definition above) b) in all cases (see possible definition above)

63. At a later date, and once the first proposal on interpretation and translation was adopted, further individual proposals could be put forward to cover the following rights: the right to information on rights and to information about the charges (Letter of Rights), the right to legal aid and legal advice, the right for a person deprived of his/her liberty to communicate with relatives, employers and with consular authorities and special safeguards for vulnerable persons. A Green Paper on the Right to Review of the Grounds for Detention would also be part of the package.

SECTION 7: ANALYSIS OF IMPACTS OF POLICY OPTIONS

Option 1 - Status quo:

64. There are no discernible or measurable economic or environmental impacts of the status quo option. There is no expected positive impact under this option. Rather the contrary: lack of action by the EU in this area may ultimately contribute to slowing down the progress achieved in the area of judicial cooperation in criminal matters and thus the construction of a common area of freedom, security and justice.

65. In terms of social impacts, the status quo option could, over time, lead to greater lack of trust between Member States since it is foreseeable that an increasing number of their nationals will be involved in criminal proceedings in other Member States. When there are cases that are perceived in one country as a failure of justice in another (such as the recent Michael Shields case between the UK and Bulgaria) this affects the trust between not only the judicial authorities of the relevant countries, but also ordinary citizens who read about these cases in the press. Failure to take action at EU level could also undermine the positive example it has provided to third countries. For example when the Commission's 2004 proposal was adopted by the Commission, Turkey was amending its Code of Criminal Procedure. It included in the new version a provision for a Letter of Rights, which was a right set out in the Commission proposal as Turkey understood this to be "the EU standard", even though the Letter of Rights, as part of the 2004 Framework Decision, was never adopted in the Council.

66. This option would mean that barriers to a fair trial because of lack of interpretation and translation remain. There would continue to be unfair access to justice for accused persons who do not understand the language of the criminal proceedings. In addition, this option could in entail continued supplementary costs for the citizens involved in cross-border criminal proceedings who require the assistance of defence lawyers specialising in such cases, in particular where such assistance is not automatically provided by member States or not throughout the proceedings.

Option 2 - Best practice:

67. There are no discernible or measurable economic or environmental impacts of the best practice option. Socially, the best practice option could have some impact since there would be some improvement in practice in the provision and training of interpreters and translators which should eventually contribute to improving mutual trust.

68. Positive impacts: recommendations for best practice could result in some improvements if Member States chose to follow the recommendations. It could also have a filter through effect on third countries emulating EU standards. Over time, this could be expected to have a greater impact if more Member States (and third countries) choose to adopt the recommended practices. The social groups most affected would be legal professionals (judges, prosecutors and lawyers), legal interpreters and translators and other auxiliary staff in these two professions and accused persons themselves. If Member States followed the recommendations it would enhance access to justice for citizens. Such a non-legislative instrument would allow scope for provisions on training, accreditation and certification, keeping a register and laying down a code of ethics. These have all been recommended by the Reflection Forum on Multilingualism and Interpreter Training.

69. Negative impacts: much of this proposal echoes what the Council of Europe includes in Recommendations and what other experts have advised, but which has not been carried out. There will therefore be a risk that this further guidance will not be implemented. This option may also disappoint the EP, stakeholders and a number of Member States who have long called for a binding instrument in this area which Member States must implement and is subject to the Commission's scrutiny. The cost of implementing the guidance cannot be anticipated with any accuracy, because it will depend entirely on the methods adopted by individual Member States. However, such figures as are available could be useful to give an order of magnitude. See table 6 in Annex 5 – which is a summary of the Status Quaestionis study. For those Member States that do not run any courses for interpreters and translators in order to enable them to specialise in legal interpreting (or even any courses at all for people wanting to become interpreters and translators), the first costs to take into account will be the costs of establishing courses. The report of the Reflection Forum on Multilingualism and Interpreter Training recommends that Member States "provide appropriate training in legal interpreting, both for new and already practising legal interpreters. Such training should lead to a nationally recognised professional certification and be accredited by a recognised authority. Efforts should be made to develop equivalent training throughout the EU, making a quality label of the establishments offering training, the exchange of materials, trainers and best practices, and a compatible register possible".

70. According to the Status Quaestionis study, 3 Member States provided interpretation and translation of a higher than average standard. When the Commission asked Ministries of Justice for information on these costs, four Member States were able to provide very rough costs. One was the UK. Since the UK is said to provide a quality service, UK costs will be set out here as a very crude indicator. The UK Home Office (Better Trials Unit) is responsible for overseeing provision of translation and interpretation. No figures were given for

translation costs (and in fact no Member State provided these costs). In London, 7 colleges run courses leading to the appropriate qualification. One college received a one-off £5,000 grant to enable it to develop the course. Students (already qualified interpreters) have to pay £200 tuition fees to take the course. The first cost to take into account will therefore be of running a sufficient number of courses in each Member States. For comparison, the figure provided by IE was €4.4 million for both interpretation and translation last year.

71. The cost will vary from one Member State to another, depending on how many colleges already offer suitable course or have departments that could offer suitable courses if asked to do so. It could be that around £5,000 would be enough to help these colleges develop suitable courses (but this figure seems very small).

72. The Council of Europe has issued guidance on how to implement the ECHR, but the number of findings of violations in the ECtHR suggests that these are not fully adhered to by Member States. The objective of improving mutual trust would therefore not be achieved by this option alone.

Option 3. New instrument covering all rights.

73. This option would involve proposing a Framework Decision along the lines of the Commission's 2004 proposal in its original form, that is to say covering several procedural rights in criminal proceedings e.g. legal assistance, access to legal advice, legal aid, interpretation and translation, Letter of Rights as set out above.

74. Positive Impacts: a Framework Decision of this sort would increase the level of legal certainty among Member States. It would be a binding instrument improving compliance with ECHR standards to ensure a fair trial. It would be a broad instrument encompassing many procedural rights and would mean that EU citizens could be sure that they would have the same rights in other Member States in criminal proceedings as they do in their own Member State (if it was adopted and implemented in all Member States). This would also have a significant impact on the level of mutual trust among Member States as practitioners would be reassured that the procedural rights covered by this legislation apply throughout the European Union, no matter where the proceedings are taking place. In turn, this could change the public's perception that justice abroad works differently than in one's own country. Ultimately, such legislation could benefit traditional freedoms in the European Union, such as the freedom to move to and settle in other EU countries, whether for private residence or business purposes.

75. Negative impacts: The discussions of the 2004 proposal showed that Member States tended to have problems with one or other right that formed part of the 2004 package, and this was true even of those Member States that agreed with the proposal in principle. This led to a lesser degree of support overall, and to a watering down of provisions to suit one or two Member States on each right. Tackling rights together as part of a package means that there is less time to devote to each individual right and that watering down occurs with trade-offs whereby one Member State will agree to a watering down in exchange for another Member State supporting their own suggestions for watering down a different part. This can

lead to a lower standard for the whole package than if each right is negotiated individually as part of a single proposal.

76. If the Lisbon Treaty comes into force, unanimity will no longer be required in order to adopt legislation in the Council and the European Parliament would play a role in co-decision. Since 21 Member States supported the 2004 proposal and the European Parliament has been calling for a measure of this type for some time, both these factors make it more likely that a broader instrument could be adopted. Yet, a treaty change in itself would not solve the problem of mutual trust among the Member States. Trust is based on experience, not treaties. In that, it requires that Member States, practitioners and citizens have, over a longer period of time, positive experience with each other's criminal justice systems and acquire the belief that criminal proceedings in other member States do not entail any additional risk for their citizens' procedural rights to a fair trial. This mutual trust will need legislation and practical measures alike.

Option 4 - Framework Decision on cross border cases only:

77. There is no established definition of a "cross border" case. If the accused is a foreigner, there is an obvious cross border element, but a case which seems purely domestic can become a cross border case if, for example, evidence or a witness is required from another country, if assets or proceeds of crime are in another country or if it transpires during the proceedings that part of the offence was committed abroad (e.g. drug trafficking). Since these unforeseen developments can occur at any stage of the proceedings, even during the trial (as a result of unexpected witness testimony), any "purely domestic" case can become a cross border case. For this reason there is reluctance on the part of Member States to define a cross border case or to adopt legislation which necessitates a definition of cross border cases.

78. An accused person who doesn't understand the language of the proceedings is at a disadvantage and therefore respect for fair trial safeguards are relevant especially those concerning interpretation and translation. However, this is not only a linguistic problem; there are also cultural aspects since a foreigner will be unfamiliar with not only the language but also customs, traditions and the way in which legal proceedings are conducted. There are various rights to be respected, but an additional, and necessary first "layer" of rights for the foreign accused person is that interpretation and translation is provided so that he can access his other rights (such as legal advice, being informed about what he is accused of etc.). Therefore fair trial rights should be respected for all accused persons by all Member States but without the first step, in certain Member States in particular, fair trial rights are not being accessed by foreigners owing to a lack of interpretation and translation.

79. There is no specific research on the number of cases in which the accused is a foreigner. DG-JLS's survey of ECtHR case-law suggests that at least 10%[37] of cases before the ECtHR involve a foreign national. Given that Article 6 ECHR

[37] See section 2, question 1(a) below.

produces considerably more cases and findings of violation than any other article, it is clear that breaches of the ECHR are occurring in all Member States. These cases involve domestic as well as cross border cases.

80. However, the Commission's focus at the moment is on the right to interpretation and translation. The majority of cases where a suspect or accused person will be in need of interpretation and translation will be cross border cases since those are the ones in which it is most likely that the accused person will not understand the language of the proceedings, by virtue of being a foreigner.

81. The economic impact of this option would be twofold: (1) the cost of services (lawyers, cost of State-funded lawyers, cost of translators and interpreters, cost of running a scheme to provide the services of interpreters and translators) and (2) the gain in reduced costs of appeals (including appeals to the ECtHR for failure to meet ECHR standards). These costs and benefits would vary so much from Member State to Member State that it is not possible to quantify[38] accurately for any one Member State, since this would depend on the starting point. However, the expected economic impact would be clearly less important for this option than for option 3, since the obligation to provide interpretation and translation services would be limited to a fraction of the cases dealt with by national judicial authorities[39]. The Status Quaestionis study for example shows that a few Member States are already implementing the type of training and provision envisaged here. Likewise for legal aid schemes, some Member States (UK, NL) have fully funded schemes whereas others (e.g. BE, ES) do not have a developed state-funded legal aid scheme in place (in BE, criminal legal aid is provided by trainee lawyers in the final stages of their training as part of the requirements to qualify, in Spain a limit is placed on state funded legal aid of 250 euro per case which means that people who would be eligible for state funded legal aid in other Member States are required to pay for their defence or represent themselves).

82. The possible risk of this option could be a reduction in mutual trust since the impression could be given that there is a two-tier system of justice – one for national cases and one for cross border cases. In countries where there could be a

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[38] An example of the difficulty is provided, in the area of civil law, in the "Study on the transparency of costs of civil judicial proceedings in the European Union", Final Report: "Costs relating to those resulting from the intervention of an interpreter, translator or an expert are follow closely lawyers' fees in the level of regulation that pertains to them. ***In nearly half of the Member States (twelve), experts' fees are freely determined by the experts. The same applies to translation and interpretation fees.*** It is thus possible to draw a parallel between this observation and the results obtained for transparency. Indeed, the least regulated sources of fees are those which appear to be the least transparent. (Page 54); Although the access to law and courts by anyone, even if they cannot speak the language of the Forum State, is a principle recognized by national legislation, the costs of interpreters and translators are not usually regulated. In most countries, the fees are freely determined by both interpreters and translators. The criteria used to justify the differences in fees are usually the same". (page 196)

[39] See Annex 3 for more detailed figures on the costs of translation in civil proceedings (excerpt from Study on the transparency of costs of civil judicial proceedings in the European Union", Final Report pages 198 – 201).

purely national case involving need for legal aid or interpretation and translation, there could be dissatisfaction on the part of a national who needs legal aid and/or interpretation but was not provided with it, if a foreigner in the equivalent situation would receive such assistance. An instrument conferring rights on a limited category of suspects and defendants, namely those involved in cross border cases, could therefore lead to a dual standard. This would have the opposite of the desired effect since certain accused persons would have more rights than others within a single Member State.

83. Positive impact: this would satisfy the Member States that have been asking for a measure limited to cross border cases or arguing that this is the limit of the EU's competence.

84. Negative impact: a measure which attempted to restrict its scope to cross border cases could lead to confusion since the same case can be described or classified as cross-border or as domestic by different Member States. There are no fixed criteria for defining a "cross border" case. The resulting differences in classification could possibly increase mistrust.

85. Compliance: Member States could have difficulty in practice in classifying cases as "cross border" or "domestic" so mistakes/disputes would occur naturally.

Option 5: Step-by-step approach beginning with legislative measures on access to interpretation and translation services

86. During the negotiations on the 2004 proposal, it has become clear that Member States have very different regimes both in relation to access to legal advice and of access to state-financed legal aid. While negotiations failed on the text, one area that proved to be less problematic was that of access to interpretation and translation during criminal proceedings. This would indicate that new legislation could be more successful if a different, step-by-step, approach was followed, starting from an area of rights which is less controversial and progressing towards the more controversial ones.

87. The economic impacts of this option would be twofold as above for the cross border option. The social impacts of this option could be an increase in mutual trust since the judicial authorities of each Member States would be more comfortable surrendering nationals or transmitting evidence if they knew that their nationals would be assisted by an interpreter and a translator in the proceedings in the other Member State.

88. At the national level, trust would be increased, as the justice systems would be fairer and be perceived as more ECHR compliant. In addition, if a proposal on the right to interpretation and translation were perceived as a first step towards building mutual trust with a commitment to examine the desirability of addressing other rights at a later stage, this would send out a positive message that the EU was addressing the problems encountered when the 2004 proposal failed in a realistic and measured way. It would be a positive step at EU level which respects the position of those Member States who had difficulties with a broader instrument covering more rights. An additional advantage of tackling each right separately is

that more through can be put into the discussions in Council with the very precise details of how each right would work being given attention.

89. Positive impacts: a measure of this type would be in line with Tampere commitments. It would result in an improvement in the quality and provision of interpretation and translation in criminal proceedings. As stated above, the effect could be felt beyond the EU amongst those countries that seek to emulate the EU standard. The effects would be greater over time. Experience shows that Member States can be slow to implement third pillar legislation as can be seen from the Commission's implementation reports on Framework Decisions which show that Member States have not always fulfilled their obligations by the date agreed in the Framework Decision itself. Usually, if the Commission waits and gives Member States a year or two longer, more will have submitted their transposing legislation. (Examples: FD on financial penalties, freezing orders, confiscation orders. Even with the European Arrest Warrant, a popular measure, only 8 out of the then 15 Member States had completed the implementation process by 1 January 2004). This staggered implementation means the effects would start to be felt exponentially as more Member States transposed and implemented the instrument. This would be all the more so for those Member States that currently fall below the ECHR and other international standards (identified in the Status Quaestionis study). The social groups most affected would be legal professionals (judges, prosecutors and lawyers), legal interpreters and translators and other auxiliary staff in these two professions and accused persons themselves.

90. It would contribute to the development of mutual trust. It would ensure a fair trial in cases where the suspect does not understand the criminal proceedings, his rights or the full charges before him. The procedure would be explained in a language that the accused understands, which is essential for a fair trial. It would ensure a more level playing field where citizens would understand the nature of the criminal proceedings against them and their rights. It would allow for greater access to justice as it would strengthen the accused's ability to make informed choices.

91. Negative impacts: it would place a financial and administrative burden on Member States that currently do not offer training to legal interpreters and translators (see below for costs considerations). Evaluation/monitoring of compliance would be required which would also be burdensome whether it was carried out by the Commission, by academics or other stakeholders or by the Member States themselves.

92. It is not possible to establish with precision the costs of option 5. There are several reasons for this: figures relating to costs of having quality legal interpretation and translation services are not available from Member States. Member States are all at very different stages in the process of establishing such services so individual calculations would have to be made for each Member State and the necessary information is not available. Some Member States already use trained interpreters systematically, some do not. The costs would vary according to the number of proceedings involving interpretation and translation and the costs include not only the cost of providing interpretation and translation in criminal proceedings but also in many Member States the cost of training interpreters and translators since some

Member States do not use set proficiency tests or use trained professionals but simply people who profess an adequate knowledge of the relevant foreign languages. See tables 5 and 6 in annexe 4 for estimates of the number of proceedings involving non-nationals in all Member States and costs of providing interpretation and translation in these proceedings. Most Member States do not collect and disseminate data about numbers of criminal proceedings per year. The Commission has made its "best guess" as to the number of criminal proceedings in each Member State (see table 5, annexe 4 and explanatory notes). From this figure, a figure for number of proceedings involving non-nationals was estimated. In some cases, we have the exact figure and where this is so, this is set out in the explanatory notes. For other Member States, we have taken the population as a whole, then applied an EU average to estimate the number of foreign nationals living in that Member State, and from that figure, we have provided an assessment of how many proceedings will involve non-nationals. Owing to their speculative nature, these figures are for rough guidance only but will nonetheless provide Member States with some assistance in working out the likely costs of interpretation and translation per year (table 6, annexe 4). For those Member States that already provide interpretation and translation in accordance with the ECHR, the costs of implementing this proposal will not be much higher than current costs. For those that do not or those that will need to train interpreters and translators in order to fulfil their obligations, the costs will be higher.

93. In terms of paying interpreters. For the year 2007-8, the UK provides "rough" figures of £22 million for the costs of having interpretation in police stations and £15.4 million for the costs of having interpreters in courts. The UK's budget is dramatically higher than those of all other Member States. The UK is one of the 3 Member States whose provision is said to be of above average quality and it could therefore be that this would be the standard to aim for other Member States, with attendant costs. SE also provided a figure of €3.15m for costs of interpretation in 2008 and NL a figure of €27m in 2008 (including telephone interception interpretation and interpretation during police questioning). See Table 6, annexe 4 for Commission estimates of the costs of interpretation per Member State with the envisaged provisions in force.

94. No figures are available for translation costs. Translation costs are usually on the basis of per word or per page rates. They vary across the EU. Private translators specialising in legal translation can ask for rates of between 100 and 150 euro per 1,000 words but the Commission does not have any figures for rates paid to translators employed by courts. Also, the size of documentation varies according to judicial tradition and the complexity of cases in question (see annex 3). Table 6 in annexe 4 sets out Commission estimates of the cost of providing translation with the envisaged provisions in force. For each Member State a range is given. The explanatory notes set out how this figure, and the range given, was reached.

95. At the March 2009 experts' meeting, the suggestion of working on this right alone as a starting point was greeted with enthusiasm by many participants, including delegates from Member States. Additionally, the Commission has considerable knowledge in-house about this right. In March 2009 a Report was published by

DG Interpretation: the Final Report of the Reflection Forum on Multilingualism and Interpreter Training[40]. This Report was the fruit of meetings of the Reflection Forum during 2008 and 2009 to identify whether there is a need for action and if so, what action could be taken. The Forum concluded that there was a need and set out Recommendations as to how to improve the provision of competent and qualified interpreters in criminal proceedings. The Recommendations included having a Curriculum in Legal Interpreting, and a system of accreditation, certification and registration for legal interpreters. A Commission proposal providing for the right to interpretation and translation in cases where the accused does not have the nationality of the country holding the proceedings would cover almost all cases where the accused does not understand the language of the proceedings except proceedings held in bilingual countries.

[40] See paragraph 22 above and footnote 12.

SECTION 8: COMPARING THE OPTIONS

+++ Indicates high positive impact

0 Indicates zero impact

---- Indicates high negative impact

Option	Effectiveness against the objectives and coherence with other EU policies in place		Impact on society and fundamental rights	Efficiency	Political feasibility
	Provide minimum standards for procedural rights in criminal proceedings	**Ensure citizens are informed of how they can benefit from minimum standards**			
1. Status Quo – no further action at EU level	0 None of the objectives would be met without any EU action		0 Continuing imbalance between rights and judicial cooperation may damage justice and mutual trust in EU.	0 No cost to MS	EP and most MS expect EU action.
2. Non-binding/non legislative measure setting out 'EU best practice'	+ Dependent on MS willingness to implement. Will not harmonise standards.	++ A well-organised Europe-wide information campaign may raise awareness of ECHR rights and what can be done if people feel they have not been upheld.	+ If Member States follow guidance consistently then rights of the accused would be upheld.	- Dependent on how implemented. Main cost will be training which could be borne by students. For large MS (source UK) grants of about €5000 to each college	All MS agree on need for some non-legislative measures. Experience suggests non-binding guidance will not be followed consistently.

Option	Effectiveness against the objectives and coherence with other EU policies in place		Impact on society and fundamental rights	Efficiency	Political feasibility
	Provide minimum standards for procedural rights in criminal proceedings	**Ensure citizens are informed of how they can benefit from minimum standards**			
				envisaged.	
3. Reintroduce 2004 instrument covering all rights	+++ Sets down comprehensive common standards.	+ A comprehensive Instrument in itself without flanking measures would not raise public awareness, but it would draw the attention of national media to more controversial elements.	+++ All accused persons would be guaranteed rights under ECHR. Would provide basis for mutual trust across the EU. Perception of standards of justice could help encourage more citizens to exercise right to freedom of movement.	--- Costs expected to be very considerable, especially for legal aid in those MS which do not currently provide it.	Would be rejected again by the 6 MS who opposed the proposal in 2006. Lisbon Treaty may enable current (2004) proposal to be passed by QMV with possibility for opt-outs.
4. Instrument on all rights but limited to cross-border cases	++ Would provide limited common standards but not for all citizens who are accused of an offence.	- Again, without flanking measures this would not raise public awareness. Attention of national media, possibly hostile to guaranteeing of rights for only those involved in cross-border cases, whose reports could be misleading.	- Accused persons would be guaranteed same rights wherever in EU they are arrested. Risk of creation of 2 tiers of accused – those in cross border and those in domestic cases – leading to discrimination which may outweigh benefits.	-- Will depend on the proportion of cases which will be deemed 'cross-border' and will vary between MS – for which statistics are not available. But costs still expected to be high.	Definition of 'cross-border case' likely to be disputed, especially as it may lead to fundamental rights concerns of positive discrimination. Unlikely to be any more acceptable than option 3.

Option	Effectiveness against the objectives and coherence with other EU policies in place		Impact on society and fundamental rights	Efficiency	Political feasibility
	Provide minimum standards for procedural rights in criminal proceedings	**Ensure citizens are informed of how they can benefit from minimum standards**			
5a. Framework Decision limited to the right to translation and interpretation in cross border cases only	+ Limited common standards in the area where considered to be most urgent but not for all citizens who are accused of an offence. Would demonstrate progress and incremental approach.	- As above, hostile media interest could be misleading.	- Accused persons would be guaranteed same rights to translation and interpretation wherever in EU they are arrested. Risk of creation of 2 tiers of accused – those in cross border and those in domestic cases – leading to discrimination which may outweigh benefits.	- Costs will depend on the proportion of cases which will be deemed 'cross-border' and will vary between MS. Statistics are not available (but see Table 6 at Annex 5).	Most or all MS expected to support if definition of 'cross-border' agreed. It would meet the proportionality test, as action would not go beyond what is necessary to meet the objectives of the Treaty. It would also observe the subsidiarity principle, as it would not interfere with purely domestic cases.
5b. Framework Decision limited to the right to translation and interpretation in all cases	++ Limited common standards in the area where considered to be most urgent.	0 Unlikely to have any effect on awareness without flanking measures.	+ Would provide greater equality of access to justice by enshrining the right to understand the charge and proceedings.	-- Large member state (source UK) cost of access to adequate interpretation estimated about €40m per year. Cost of translation varies according to the price scheme prevalent in individual member states.	Most MS would support action in this area.

SECTION 9. THE STEP-BY STEP APPROACH IN MORE DETAIL: COMBINING OPTION 2 AND OPTION 5

96. Combining options 2 and 5 would maximise the synergies between legislative and non-legislative action. A binding legislative instrument would lay down the basic minimum requirements that Member States should meet, while recommendations for best practice could go into greater details on how to organise training, accreditation for translators and interpreters, a registration scheme, possible guidance on rates of pay and more detail about how much provision would be desirable. Some of these issues relate to the organisation of the interpreters' and translator's professions and as such are not third pillar issues, but rather regulation of a profession. Consequently these recommendations could not be covered by a legislative instrument but they are important nonetheless for the provision of interpretation and translation in criminal proceedings.

97. This option would be to enable a progressive, step-by-step, approach, which would satisfy both those Member States which are calling for legislation and those who want soft-law instruments. It could provide scope for a longer term action plan for the progressive approximation of laws in the area of procedural rights taking account of practical aspects either. This approach would not be as dependent on the Lisbon Treaty as option 3. An action plan could be agreed at political level and require that all institutions, including the Council, continue work on procedural rights over a longer period of time. Further specific rights, including the rights which the 2004 proposal had suggested, would be examined again individually and, if appropriate, some or all could be addressed by legislation and/or best practice guidance to Member States.

98. This option would result in an improvement in the quality and provision of interpretation and translation in criminal proceedings. The effect could be felt beyond the EU amongst those countries that seek to emulate the EU standard. The effects would be greater over time. Experience shows that Member States can be slow to implement third pillar legislation so the effects would start to be felt exponentially as more Member States transposed and implemented the instrument. This would be all the more so for those Member States that currently fall below the ECHR and other international standards (identified in the Status Quaestionis study). The social groups most affected would be legal professionals (judges, prosecutors and lawyers), legal interpreters and translators and other auxiliary staff in these two professions and accused persons themselves.

99. This approach would contribute to building mutual trust by using a long-term commonly agreed working method and recognising that certain issues need to be addressed at EU level, either through legislation or soft-law, or both. It would ensure a fairer trial in cases where the suspect does not understand the criminal proceedings, his rights or the full charges before him. The procedure would be explained in a language that the accused understands which is essential for a fair trial. It would ensure a more level playing field where citizens would understand the nature of the criminal proceedings against them and their rights. It would allow for greater access to justice as it would strengthen the accused's ability to make informed choices. The addition of an instrument setting out best practice would be

that Member States would have a clearer idea of how to achieve the standards set in the Framework Decision and how to provide the training, accreditation and registration aspects

100. The option would place an additional financial and administrative burden on Member States that currently do not offer training to legal interpreters and translators. Evaluation and monitoring of compliance would be required which would be an additional burden.

101. Furthermore, this option is politically feasible and accepted as a legitimate area of interest for the EU since it will affect cross border cases only. It is clear from the fate of the Commission's 2004 proposal that an instrument covering the same rights will not meet with agreement in Council, but a proposal for action focused on a single issue such as this could be received much more favourably. During discussions on the 2004 proposal, the right to interpretation and translation were viewed as less controversial, in particular by those Member States that opposed the full proposal. There is therefore a greater chance that these two rights could form the subject of agreement in Council than a broader instrument. Having both a legislative proposal and a 'Best Practice' proposal on the table would enable greater flexibility to move provisions from one to the other according to Member States' wishes and existing systems, making adoption more feasible. The preferred option goes beyond the 2004 proposal in that it sets out in detail these specific rights to be covered in a legislative instrument and with flanking best practice guidance.

102. The Commission has experience of trying to put forward a broad scope instrument covering a number of rights. This was not achievable. It is now important to put forward an instrument that is going to succeed in achieving agreement. The Commission must therefore be realistic and start with a small step such as the one described in the Impact Assessment. If this proposal was agreed without too many problems, and the climate suggested that other proposals covering other rights might also succeed, the plan would be to introduce all the rights that were set out in the Commission's 2004 proposal one at a time (1. the right to legal advice, both before the trial and at trial, 2. the right to interpretation and translation, 3. specific attention for persons who cannot understand or follow the proceedings and protection for minors, 4. communication with family and consular authorities while in detention and 5. Letter of Rights).

103. The step-by-step approach would address these issues separately, in the following order:

- Right to Translation and Interpretation : a measure on the right to translation and interpretation as well as a document on best practice on the right to translation and interpretation

- Right to Information on Rights : a measure on the right to information on rights and to information about the charges as well as a document on best practice regarding the right to information on rights and to information about the charges

- Right to Legal Aid and Legal Advice: a measure on the right to legal aid and legal advice as well as document on best practice regarding the right to legal aid and legal advice

- Right to Communication with Relatives: a measure on the right for a person deprived of his/her liberty to communicate with relatives, employers and with consular authorities

- Special Safeguards for Vulnerable Persons: a measure on special safeguards for vulnerable persons

- Length of Detention: a Green Paper on length of detention.

How the obligation to provide interpretation and translation would enhance mutual trust

104. Respect for the right to translation and interpretation is essential, but not sufficient, for mutual trust. The obligation to provide interpretation and translation is only a first step towards enhancing the position of the suspect/accused. It is, however, an essential right in that in enables exercising other rights, such as the right to legal aid or the right to receive information about one's own rights. Understanding the proceedings is a pre-condition for asserting one's other rights to a fair trial. As such, this right will contribute to ensuring that the suspect/accused is in a position to communicate with the authorities, in particular to ask and answer questions or to exercise the right to keep silent.

105. Once the defendant is in a position to communicate with the authorities and understand why proceedings are brought against him, he will be able to clarify his other rights and ask whether he is entitled to have a lawyer. The authorities will have to provide this information in accordance with Article 6 ECHR and national law. While having access to an interpreter/lawyer will not *per se* achieve a better protection of other rights, e.g. the right to have a lawyer, without interpretation/translation the suspect/accused would possibly not even know that he has other rights. Thus, the right to interpretation and translation is a first but essential guarantee for the suspect/accused to obtain a fair trial and may in a number of cases prevent a further miscarriage of justice.

106. The step-by-step approach, once approved by the JHA Council, will be based on the political undertaking of the Member States to work with the Commission - and possibly with the European Parliament soon – to complete the catalogue of fair trial rights over the next 5 years.

Summary of the step-by-step option

Relevance to objectives	**Impact on society and fundamental rights**	**Costs**	**Political feasibility and stakeholder views**
Fully meets objectives if MS	Limited common standards in the area where considered to	Costs will depend on the proportion of cases which will be	As above – most MS expect legislative action with flanking

implement guidance	be most urgent. Would demonstrate progress and incremental approach.	deemed 'cross-border' and will vary between MS. Cost of access to adequate interpretation for large MS (UK) is about €40m per year. Cost of translation varies according to the price scheme prevalent in individual member states. Cost of flanking measures will depend on how implemented. Main cost will be training which could be borne by students. UK Govt provided grants of about €5000 to each college.	measures.

SECTION 10: MONITORING AND EVALUATION

107. Any Commission proposal would lay down an obligation for Member States to communicate implementing legislation and a correlation table to the Commission within a specified time (2-3 years is usual). The Commission would then prepare an implementation report recording which Member States had complied with their obligations to transpose the Framework Decision. Indicators which can be used to assess compliance would be whether training courses were on offer for potential legal interpreters and translators, whether a register was in place and whether numbers of certified interpreters and translators could be provided.

108. At the 26 and 27 March experts' meeting, the Committee for the Prevention of Torture (CPT, a Council of Europe body) offered spontaneously to assist in monitoring and evaluation in the context of CPT visits to Council of Europe Member States. Other possible sources of information on compliance would be the Justice Forum, national and European Bar Associations and academic institutions (such as ECLAN at ULB).

109. On a practical level, in November 2009, the European Legal Interpreters and Translators' Association (EULITA) will be launched. The establishment of this association has been possible owing to a Criminal Justice Programme grant

(JLS/2007/JPEN/249). The existence of this association will assist the Commission which has hitherto not had an official interlocutor within the professions of legal interpreter and translator (although there have been long-standing links with Professor Erik Hertog of Lessius Hoogeschool in Antwerp, the author of , *inter alia*, the 'Status Quaestionis' study). This will make it easier to receive input and feedback from, and to communicate with, the profession, and to monitor implementation of any EU measures (be they legislation or best practice recommendations).

110. A Eurobarometer survey could be used to monitor improvement in public opinion's assessment of the fairness of justice in the EU.

ANNEX 1

COUNCIL OF

THE EUROPEAN UNION

Brussels, 30 September 2004 (06.10)

(OR. fr)

12902/04

LIMITE

JUR 399

COPEN 117

OPINION OF THE LEGAL SERVICE

Subject : Proposal for a Council Framework Decision on certain procedural rights in criminal proceedings throughout the European Union

9318/04 COPEN 61 COM(2004) 328 final

I. INTRODUCTION

1. The Commission has submitted to the Council the above proposal, which is based on Article 31(1)(c) of the Treaty on European Union (hereinafter TEU). The question is whether that Article is the correct basis for the competence of the European Union to adopt a framework decision in this area. This note seeks to answer that question.

2. According to settled case-law the choice of the legal basis for a Community act must rest on objective factors which are amenable to judicial review, including, in particular, the aim and content of the act [41].

In substance, this case-law applies likewise to acts based on the TEU. It is therefore necessary to analyse the aim and content of the above proposal.

II. AIM AND CONTENT OF THE PROPOSAL

3. This proposal seeks to define minimum common standards regarding certain procedural rights in criminal proceedings in the European Union, in order to enhance the protection of the rights of the individual. The granting of an

41 See in particular Judgment of 4 April 2000, Commission v. Council, C-269/97, ECR I-2257, of 29 April 2004, Commission v. Council, C-338/01, not yet published in the ECR.

equivalent level of protection to suspects and defendants throughout the European Union should facilitate the application of the principle of mutual recognition of decisions in criminal matters in the framework of judicial cooperation between the Member States.

4. The preamble to the proposal states that the implementation of the latter principle presupposes that Member States have trust in each other's criminal justice systems. This spirit of confidence can only be established if the judicial authorities see decisions of the judicial authorities of other Member States as equivalent to their own and do not call into question their professional competence and respect for fair trial rights.

5. In the preamble it is noted that there is not always sufficient trust in the criminal justice systems of the other Member States and this notwithstanding the fact that they are all parties to the European Convention for the Protection of Human Rights and Fundamental Freedoms (hereinafter ECHR). In order to enhance this confidence, the proposal provides for certain minimum safeguards to protect fundamental rights that are to be observed in all criminal proceedings, whether or not the case in question has trans-border implications, depending on whether or not the cooperation of the judicial authorities of another Member States is sought during the proceedings.

6. Five areas have been identified by the Commission as appropriate ones in which common standards may be applied. These are: access to legal representation, access to interpretation and translation, ensuring that persons in need of specific attention because they are unable to follow the proceedings receive it, consular assistance to foreign detainees and notifying suspects and defendants of their rights in writing.

7. The right to legal assistance and the right to linguistic assistance for foreigners and, where necessary, for those suffering from hearing or speech impairments, are enshrined in Article 6 of the ECHR. The provisions of the proposal impose on Member States obligations identical to those imposed by the ECHR and set out common ways of complying with that Article.

8. The right to consular assistance exists by virtue of Article 36 of the 1963 Vienna Convention on Consular Relations where it is a right conferred on States to have access to their nationals detained abroad if they so wish. The provisions of the proposal confer this right with regard to European citizens detained in a Member State other than their State of origin.

9. The other provisions of the proposal constitute ways of improving fairness in proceedings and ensuring that those concerned are aware of their rights.

10. Finally, the proposal establishes a mechanism to assess its implementation. To that end, Member States will have to gather and record information for the purpose of evaluation and monitoring. This information will be used by the Commission to produce reports that will be made publicly available.

III. BACKGROUND

11. In its opinion of 14 July 2000 (10341/00 JUR 241 COPEN 52) on the draft Framework Decision on the standing of victims in criminal procedure, the Legal Service examined the scope of Article 31 of the TEU. It considered whether it belonged to the objectives of the Union to harmonise the penal proceedings and practices of the Member States. While expressing doubts that this was what the authors of the Treaty of Amsterdam had in mind, given that those proceedings and practices applied to entirely internal cases, it nevertheless noted that the wording of the provisions of Title VI of the TEU offered a rather wide margin of interpretation. In the words of the opinion "if the Council felt a need to deal with aspects of the functioning of the criminal justice systems of the Member States which are not expressly mentioned in Articles 30-32 of the TEU, in order to further the more general objective of the Union of providing citizens with a high level of safety, it would have the power to do so", adding that "The improvement of such support for victims may also enhance the credibility of, and trust in, the functioning of the criminal justice system as a whole, which can also be considered a contribution to the creation of an area of security and justice.". In the Legal Service's view the proposal now under consideration follows the same logic.

12. The Legal Service notes that, in the words of Article 29 of the TEU "*the Union's objective shall be to provide citizens with a high level of safety within an area of freedom, security and justice*". The means of achieving that objective are laid down in Articles 29, 30, 31 and 32.

    Among those means are those mentioned in Article 31(1)(c), on which the Commission based its proposal. According to that provision, common action on judicial cooperation in criminal matters "*shall include*" "ensuring compatibility in rules applicable in the Member State, as may be necessary to improve such cooperation". The application of this provision depends in principle on two factors: (a) the action must aim at *ensuring compatibility* in Member States' rules and (b) the action must not exceed what *may be necessary to improve* judicial cooperation.

    Provided we remain in the area of "judicial cooperation in criminal matters", Article 31 should be interpreted broadly, in view of the expression "*shall include*" which appears in the introductory sentence of Article 31(1). We should examine whether the competences assigned to the Union by this provision may be the basis for common action which aims to establish a pedestal of standards to ensure a minimum of compatibility between the rules applicable in the Member States to the extent necessary to improve judicial cooperation between the Member States with a view to creating an area of freedom, security and justice.

13. The adoption of Framework Decisions [42] by the Council implementing the principle of mutual recognition was not accompanied by the adoption of minimum standards for the protection of individual rights. Such standards are provided for by existing international human rights treaties. While it may be true that currently, in the words of Opinion 2/94 of the Court, "No Treaty provision confers on the

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[42] Council Framework Decision of 13 June 2002 on the European arrest warrant and the surrender procedures between Member States, OJ L 190, 18.7.2002, p. 2; Council Framework Decision of 22 July 2003 on the execution in the European Union of orders freezing property or evidence, OJ L 196, 2.8.2003, p. 45.

Community institutions any general power to enact rules on human rights" [43], it must be said that there is nothing to prevent the Union, under the TEC, from laying down its own standards in order to create a high level of protection in a specific legal environment – in this case an area in which legal decisions must be recognised and executed on the basis of the principle of mutual recognition and hence of mutual trust – insofar as the essential aim of such measures is to facilitate the mutual recognition of decisions by Member States, rather than the protection of human rights.

14. Common action based on Article 31(1)(c) must to a certain degree seek to ensure compatibility between Member States' rules. It is true that the Commission has not specified whether there is currently any incompatibility between these rules, in the sense that there may be contradictions, opposition or conflict between them, either as regards basic commitments or rules governing procedure or competence, which would prevent their simultaneous application in specific cases. However, the Treaty does not stipulate that common action should consist in eliminating existing incompatibilities. The evidence of greater compatibility between the rules applying to procedural rights in criminal proceedings would increase trust between the legal systems of the various Member States.

15. Common action based on Article 31(1)(c) must not – as was stated in point 12 of this opinion – go beyond what is necessary to improve judicial cooperation. In fact, this is more generally about the obligation on the Union to respect the principle of subsidiarity (see second paragraph of Article 5 of the TEC, made applicable to the Union by Article 2 of the TEU). Given that most cases affected by the procedural guarantees in question are purely internal to each Member State, it may be asked whether the proposal is compatible with the principle of subsidiarity laid down in Article 5 of the TEC and further developed in the Protocol on the application of the principles of subsidiarity and proportionality.

Taking account of the guidelines in that Protocol, it may be said that, in strictly internal cases, action at national level alone or lack of action by the Union would not be contrary to the requirements of the Treaty and would not damage the interests of the Member States. In practice, however, it will not be possible to foresee in which cases the judicial cooperation of another Member State should or could be requested at successive stages of the proceedings. For this reason it is not possible to draw a distinction, for the purposes of determining the scope of the Framework Decision, between internal cases and others. The result is that it cannot be said that the measures laid down (which in fact are minimal) go beyond what is necessary to encourage judicial cooperation in criminal matters [44].

Therefore, if the Council is of the opinion that the guarantees laid down in the proposal at Union level offer advantages because of the positive effect on mutual trust between Member States and between courts and on the functioning of criminal justice systems, and that these measures do not go beyond what is

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43 Opinion of the Court of 28 March 1996, ECR I-1759.

44 Note the difference on this point between Article 31 of the TEU and Article 65 of the TEC, which refers to "civil matters having cross-border implications".

necessary to improve judicial cooperation, the Union may adopt the proposed measures and Article 31(1)(c) of the TEU is the correct legal basis for that [45].

CONCLUSION

16. The Legal Service considers that the Commission proposal is correctly based on Article 31(1)(c) of the TEU and that the Council can adopt the proposed measures if, in compliance with the principle of subsidiarity, it considers that they do not go beyond what is necessary to improve judicial cooperation in criminal matters.

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[45] It should be noted that, under Article III 270 of the Treaty establishing a Constitution for Europe, "Judicial cooperation in criminal matters in the Union shall be based on the principle of mutual recognition of judgments and judicial decisions and shall include the approximation of the laws and regulations of the Member States". According to Article III-270(2), "To the extent necessary to facilitate mutual recognition of judgments and judicial decisions and police and judicial cooperation in criminal matters having a cross-border dimension, European framework laws may establish minimum rules. Such rules shall take into account the differences between the legal traditions and systems of the Member States.

They shall concern:

(a) mutual admissibility of evidence between Member States;

(b) the rights of individuals in criminal procedure;

(c) the rights of victims of crime;

(d) any other specific aspects of criminal procedure which the Council has identified in advance by a European decision; for the adoption of such a decision, the Council shall act unanimously after obtaining the consent of the European Parliament.

Adoption of the minimum rules referred to in this paragraph shall not prevent Member States from maintaining or introducing a higher level of protection for individuals.".

ANNEX 2 – Meeting Report

Experts' meeting on procedural rights

26-27 March 2009

Brussels

Peter Csonka, Head of the Criminal Justice for the European Commission's DG Justice, Freedom and Security (DG JLS), chaired the expert meeting on procedural rights. The European Commission plans to submit a proposal on procedural rights to the Council by early July so that the upcoming Swedish presidency of the European Union (EU) can tackle it right from the start of its presidency.

The background is that, following a Green Paper in 2003, the Commission tabled a proposal in 2004 for the minimum approximation of procedural rights in five areas (hereafter known as 'the five procedural rights'):

- Access to legal advice, both before and during trial (and legal aid for those who cannot afford to pay for a lawyer)
- Access to interpretation and translation for non-native defendants
- Protection of vulnerable persons who cannot understand or follow the proceedings
- Communication and consular assistance to foreign detainees
- Information about rights by way of a Letter of Rights

Following Member State (MS) objections, the text was diluted and a compromise proposal was tabled by the Austrian presidency of the EU in 2006, listing general rights such as the right to information, the right to legal assistance and the right to interpretation. No agreement was reached on the proposal after discussions in 2007.

It is important that any EU text should be fully compatible with the provisions of the European Convention on Human Rights (ECHR), i.e. be "Strasbourg proof". The European Court of Human Rights (ECtHR) is overburdened. Six MS opposing the original EU proposal suggested a non-binding resolution with best practice guidance rather than a legislative proposal as they believed that the legal basis for legislation was shaky. There is still controversy as to whether there was a legal basis for the EU to legislate despite the Council Legal Service saying that there is a legal basis in its September 2004 Opinion. A non-binding report of the High-Level Advisory Group on the Future EU Justice Programme recommends that all citizens of the EU should be provided with a basic set of rights as minimum guarantees if they are subject to a criminal investigation.

Preliminary findings of the 'Procedural Rights in the European Union' study

Taru Spronken (Maastricht University) and Gert Vermeulen (Ghent University) gave a presentation on the update of a 2005 study on the five procedural rights. A questionnaire (with 122 questions) is being developed to be sent out to all MS by email on the right to information, the right to legal advice, the right to legal assistance free of charge and the

right to interpretation and translation. The aim is to find out how the rights are regulated in detail.

A preliminary comparison was given of some aspects of the Dutch and Belgian systems.

In the Netherlands, there is no Letter of Rights. On arrest, suspects are cautioned about the right to silence and given some information on the charge. Access to the file can be limited during the pre-trial investigation.

In Belgium, there is no Letter of Rights. There is no obligation to inform people being interrogated of the nature of and reason for the accusation. There are some exceptions to this in that a person formally accused by an investigating judge is only then informed at the discretion of the judge. The judge is not obliged to inform people targeted in a judicial investigation (but not officially accused) of their rights. Arrested suspects are not given any explicit information about their procedural rights (e.g. the right to remain silent). They are given access to the file one or two days ahead of their court appearance and can photocopy it at the end of the preliminary phase.

In the Netherlands, suspects have the right to choose a lawyer at any time but have no access to one before the first police interrogation and no assistance during the interrogation. In a judgment in the *Salduz* case, the ECtHR has ruled that access to a lawyer should be granted from the first interrogation by the police. In the *Panovits* case, the ECtHR ruled that lack of legal assistance during interrogation could constitute a breach of the ECHR. There is a big debate in the Netherlands as to what that means for the Dutch situation. A confession obtained without a lawyer present may be excluded from evidence.

In Belgium, there is a right to legal advice, a suspect can choose a lawyer at any time but there is no access before the first police interrogation or assistance during the first interrogation. There is a maximum of 24 hours deprivation of liberty before a suspect must appear before a judge. Lawyers and magistrates called for an extension from 24 to 48 hours as currently there are more arrests than necessary but lawyers did not ask for this to be backed up by the presence of a lawyer.

Presentation of ‘Effective Criminal Defence Rights in Europe’ (University of West of England)

Professor Ed Cape gave this presentation. There is a lack of rigorous scientific evidence on how the investigative stage works in practice. The approach is to look at issues such as equality of arms, effective representation and effective participation as experienced by those caught up in the criminal justice process. Reports have been completed for England & Wales, Belgium and Hungary while research is ongoing for Finland, Germany, Poland, Turkey, France and Italy. A conference will be held in Brussels in June 2010 to disseminate the findings and a book is to be published.

Among the preliminary findings:

Hungary

– No obligation to provide a Letter of Rights

– Ploys are used by the police to avoid legal advice being granted to interviewees before their interview with the police (e.g. questioning a person informally or questioning a suspect as if they were a witness)

– Lack of defence counsel access to information at the investigative stage

– Appointment of substitute lawyers at short notice in cases of mandatory defence (sometimes a trainee without supervision)

– No mandatory translation of key documents and poor quality of translation

Belgium

– No obligation to provide a Letter of Rights

– No right to presence of lawyer during interrogation

– No right to access the file at the investigative stage

– Poor level of quality of interpreters and no quality assurance

– Inadequate pay for defence lawyers

England & Wales

– Letter of Rights required at the investigative stage but not thereafter

– No statutory right to interpretation and translation

– Emerging themes

The ECHR does not cover all aspects of an effective criminal defence. The ECtHR intervenes when the failure of legal representation is extreme, i.e. not when there is a question mark over the defence's competence. Compliance with the ECHR's provisions on the right to a fair trial is variable. There are major deficiencies in terms of access to a defence lawyer, especially for poor(er) people. Legal regulation is necessary to ensure access to effective criminal defence but it is not sufficient as, if judges allow breaches then any legislation will be pretty meaningless. There is a lack of systematic collection of data and research on how far there is an effective defence.

Letter of Rights project

The German Ministry of Justice has drawn up a document which can provided information on procedural rights to the accused immediately after their arrest. The idea is that it will be available in all police stations in electronic form and can be accessed on the internet and then printed out. The next step is for it to be translated into other languages. The Law Society in England & Wales has a similar project. It may be possible to use it as a basis for a European-wide Letter of Rights.

Austrian project – 'Assessing pre-trial access to defence rights'

This is a project involving Austria, Croatia, Germany and Slovenia covering topics such as access to legal assistance, access to legal aid, the enforcement of defence rights, the participative rights of defence lawyers during interrogation and the recording of interrogations. It covers country reports on the legal situation, a quantitative analysis via a questionnaire and a qualitative analysis via follow-up interviews. Results are due by October 2010.

In Austria, there is a new pre-trial law in which suspects can talk to a lawyer before their first interrogation and the lawyer can be an observer at the interrogation. There is also a new Austrian legal aid emergency service which aims to make access to a lawyer possible immediately after an arrest or during a first interrogation usually by police. The pilot project began in July 2008 and was tested until October 2008 before being extended. There is a telephone hotline available to all detainees regardless of their financial means. It is a 24 hour per day, seven day per week service paid for by the detainee if he/she has enough money but by the Ministry of Justice if he/she does not. The defendant can waive their right to this.

After 48 hours, the case must go to court and then the general legal aid lawyer system kicks in. In connection with the emergency service, there has been little contact between defendants and lawyers. In each of July, August and September 2008, there were 39 cases of lawyers being used out of around 1,200 arrests per month. This is possibly because the police have not informed defendants of this right or because there is not a tradition of active defence at the pre-trial stage.

Peter Csonka (DG JLS) called for coordination between the different projects to avoid people being asked the same questions in different questionnaires.

The meeting then moved onto debate about three themes.

Theme 1 – Is there a need for EU action in this area?

Eberhard Siegismund (German Ministry of Justice): Binding EU-wide regulations are urgently needed because 60% of cases at the ECtHR are repeated cases where a decision has already been taken in a previous case with similar facts. This shows that the ECtHR has a low level of acceptance and dissemination. The provisions of the ECHR are taken too little account of in practice and so an additional instrument is needed. Cases are admissible at the ECtHR only if national legal proceedings are exhausted, which can take a long time. The ECtHR looks at an overall approach, which is of no benefit to the citizen, who wants to know if it is illegal if they do not have a legal defence at a certain stage [of their case]. We need a body that can swiftly say if measures were legal or not.

Lorenzo Salazar (Italian Ministry of Justice): Yes. Back in 2003, Italy asked the Commission to put together a proposal on minimum guaranteed rights and Italy has been in favour of adopting an instrument ever since. A citizen could be arrested anywhere in Europe but rights vary in different countries as does treatment and the material conditions of detention. We need to take action. We must ensure that it is not only legislation but also practical things and material conditions need to be aligned in Europe. Complete convergence is very difficult in the short term. Beyond the rights of those who have been arrested, we need to look at the rights of witnesses and all parties in criminal proceedings (and especially the most vulnerable).

Serge de Biolley (Belgium's Permanent Representation to the EU): Belgium's position has not changed. It is necessary to align positions in this area because EU law has continued to develop and there is a bigger gap between the right to cooperation and progress not being made in implementing our common values. Belgium is not one of the best in class in all sectors. We'll be forced to make developments. Yes to the question but there are issues such as where we need to start.

Jessica Auken (Denmark): It would be useful to know about the practical implementation of rules by MS. We don't have an overview of what is happening and we need to evaluate this and ensure that the introduction of minimum rules in Europe will help protect the rights. There is a lot of work to be done. We are a long way from a decision to introduce minimum rights everywhere. Some MS are more committed than others but often those most committed often find it most difficult to implement things. That's a pity. Denmark is sceptical about the introduction of this system for that reason. Would introducing an instrument mean the elimination of existing human rights? We need to ensure that it is legally watertight and that we do not undermine work done by others. It would be interesting to hear the Council of Europe's views on this. First we need to study this before implementing rules.

Peter Csonka (DG JLS): Is Denmark in favour of an instrument with limited scope?

Jessica Auken (Denmark): Denmark's position has not changed. It is in favour of a restricted instrument. The discussion today is about a broader catalogue of rights and my comments come in that context.

Dimitrios Zimianitis (Greek Ministry of Justice): Entirely supported what Italy said. In favour of an instrument. Greece's position has not changed since 2004. Greece believes the EU must act as the existing framework in the Council of Europe is not sufficient. We need a uniform mechanism to ensure that people's rights are uniformly applied across the EU. If the Lisbon Treaty is adopted, there would be the right to take a case to the European Court of Justice. The ECtHR is too slow and it is not possible to use it in practice.

Geraldine Moore (Irish Ministry of Justice): Ireland had difficulties with the previous proposal but sees the importance of procedural safeguards. There are minimum standards in the ECHR so Ireland wonders if a new initiative is necessary and has added value. Ireland is more in favour of best practice and peer evaluation. It would like to see practical evidence to show that an instrument is needed. The studies presented this morning were interesting and it is a pity that they will not be finished before 2010.

Adrienne Boerwinkel (Dutch Ministry of Justice): The presentations show that legislation is one thing but practical implementation is something else. Although some MS have proper legislation, the practice may not be in line with proper procedural standards. The opposite may also exist, with some MS having proper practical standards in practice but little in the way of legislation. For example, in The Netherlands, there is no legal obligation to have a Letter of Rights but extensive brochures in different languages are given to people when they are arrested. The Netherlands sees the need for EU action to improve the procedural rights of suspects in the EU but this should not focus only on legislation. It is important to accompany legislative proposals with practical measures and that we can monitor the establishment of procedural standards. Legislation, practical

measures and monitoring implementation are three elements of importance to focus on together.

Raoul Ueberecken (Luxembourg's Permanent Representation to the EU): Luxembourg's position has not changed since 2004 and has in fact strengthened. Perhaps it is time to look at rediscovering the balance between facilitating cross border prosecutions and protecting the rights of the accused. This question is closely linked to the next question to be discussed, i.e. mutual recognition and mutual trust. Luxembourg hopes the proposals will be revived soon.

Rosalind Campion (UK's Office for Criminal Justice Reform): The UK can agree with what the Netherlands said in particular. The UK does not think that legislation is the only solution and that action has a broader meaning than legislation. The UK does not want to replace the ECHR's rights but look at areas where we can add value.

Lord Justice Thomas (European Network of Councils for the Judiciary): Broadly in favour of a cautious approach to further legislation. Strong support for getting going in this area but we must recognise the deep historical differences [in systems] between MS. We need to take into account the rights of victims and witnesses and to work with representatives of these groups or else we will get nowhere.

Zuzana Cernecka (Czech Ministry of Justice): Yes to this question. The Czech Republic has supported procedural rights from the beginning but not by way of a Framework Decision. Studies today show the need for work in this area. It would facilitate mutual recognition and enhance mutual trust between MS and citizens' trust in the judicial authorities of other MS. The Czech Republic would welcome practical measures in this area.

Matevz Pezdirc (Slovenian Ministry of Justice): Slovenia has the same position as before and supports EU action. We should have legislative action in procedural rights. There is a gap between legislation and reality. Slovenia can support the idea of practical measures accompanying legislation plus some evaluation. With lots of mutual recognition instruments, we need action in the area of procedural rights and protection of citizens in this respect.

Eszter Viczko (Hungarian Ministry of Justice): Hungary supports legislative measures.

Anna Ondrejova (Slovakia's General Prosecutor's Office): Slovakia's position is the same as in 2007. Although aware of the information and results of research here, it still has misgivings about overlap between the jurisdiction of the ECtHR and the European Court of Justice (ECJ). Slovakia sees a place for measures other than legislative ones.

Marina Gusauskiene (Lithuania's Ministry of Justice): Yes to the question. Lithuania agrees with The Netherlands that it not only legislation but practical implementation that matters. There is a fresh code in Lithuania and the country is not afraid of EU intervention as it has good standards on paper but is not so good in practice. Some of the rights are cheap whereas others are expensive (e.g. legal advice and interpreting services). The right needs to be followed up with good finance and good organisation of the service. Rights of victims are important too and Lithuania is happy that the Commission is doing something on that.

Peter Csonka (DG JLS): More will be done on victims' rights. A proposal to amend the 2001 Framework Decision on victims is due in the second half of 2009.

Bernhard Weratschnig (Austria's Ministry of Justice): Austria has always supported a procedural rights instrument and will agree to it. In terms of its scope, that is something we'll come back to later.

Trevor Stevens (Committee for the Prevention of Torture): Stevens could not give a Council of Europe position on this question. From on-site visits to prisons and police stations in some 47 countries, he pointed to huge differences between MS on procedural rights. Where rights exist, they are not necessarily applied in practice. The CPT has a lot of information that it is willing to share with researchers (e.g. on access to lawyers, doctors etc.) and the Commission and participants to this meeting can contact the CPT when they come to Strasbourg. If there is EU legislation in this area and the CPT likes it, it will check carefully if it is complied with.

Peter Csonka (DG JLS): Thanked Stevens for the information and monitoring offers. If there are standards, the CPT is well placed to check what is done in practice as we see a growing gap between legislation and what happens in practice.

Holger Matt (European Criminal Bar Association): Speaking as a European citizen, Matt said that European citizens who are arrested in another country expect to be told in a language they understand what the matter for which they have been arrested is about. The right to a translator must be established once and for all. It is difficult to understand why we are hesitating about this. We need practical means to enforce this right and therefore we need an EU instrument. The right to silence is also part of the core rights that we need to discuss when addressing procedural rights.

Karoly Bard (Central European University): The slowness of the ECtHR procedure is a strong argument as is the fact that it is always reactive. The ECtHR is not that much help in enforcing the rights of individuals. We need more than the rights of the ECHR.

Anthony Barbara (Maltese Ministry of Justice): The situation needs to be improved but the question is how. In Malta, if you keep silent and do not answer questions from the police, no inference of guilt can be taken.

Cyprus: Cyprus's position is the same as in 2004. It does not think that legislation is needed but may change its views in the near future.

<u>Theme 2 – Mutual recognition and mutual trust – What is necessary by way of procedural rights to promote mutual trust?</u>

Gisèle Vernimmen presented the ULB study on this. In her conclusions, she said that there was broad consensus that something needed to be done. The options are:

Soft law/best practice – less priority/resources are given to this as for binding rules and it needs good will to ensure that it works.

A binding instrument – this would improve the respect of rights thanks to the involvement of the ECJ and would make free movement of people easier as there would be the same safeguards in different countries

Accompanying measures (e.g. training and networking)

In terms of which rights to cover, a Letter of Rights is fundamental. Even if it is not mandatory, there is a lot of positive experience in several MS and it should be encouraged.

Even if there is rapprochement between MS, this is not enough. There needs to be information and training, networking and double defence (i.e. in the executing and issuing MS – this has consequences for legal aid as if a person gets it in one country they should get it in the other)

Theme 3 – Crossborder v domestic proceedings

Discussion on whether any future EU legislation should be limited to crossborder cases or should cover crossborder and domestic proceedings

Peter Csonka (DG JLS) asked participants which option they would prefer. If there should be separate proceedings (crossborder ones and domestic ones), he asked how this would work in practice given that a domestic case can become a crossborder one at any time.

Jodie Blackstock (Justice): One main reason why the Commission's proposal was rejected in 2007 by some MS was about the perceived lack of a legal basis for adopting an instrument. Justice thinks that this needs to be tackled head on and argues that there is a legal basis. Justice sees making a division between crossborder and domestic proceedings as unworkable in practice as cases can switch from crossborder to domestic or vice versa after investigations have begun. Justice argues that, to further cooperation, there need to be procedural safeguards covering both crossborder and domestic proceedings. It believes that the five rights identified are necessary. Justice argues that both the ECtHR and CPT can only deal with breaches after they have occurred. For Justice, unless the EU has an EU-wide set of standards applying in all circumstances, which defence lawyers can rely on, judicial cooperation will not be realised. Binding regulation with detailed provisions on how they can be used and how they can be measured is essential.

Ilias Anagnostopoulos (Chair of the CCBE Criminal Law Committee): We know from EAW procedures that it is not enough to have a defence counsel in the executing MS as it is necessary to have one in the issuing MS too. For a European Evidence Warrant, advice is needed in both the executing and issuing MS. He does not believe that a legal instrument limited to crossborder cases would be an alternative to an EU-wide instrument. This is not only because of the possible creation of a double standard but such a policy would be a step backwards towards the era of extradition proceedings. Although there are good grounds to pay special attention to the crossborder element, this could not be an alternative to an EU-wide catalogue of procedural rights. A new EU legal instrument would set in motion all the monitoring mechanisms that are currently not there.

Rosalind Campion (UK's Office for Criminal Justice Reform): The UK is very keen to look at anything that will enhance crossborder cooperation. The discussion is very theoretical. It would be better to look at a text and see if there is a legal basis or not.

Alina Barbu (Romanian Ministry of Justice): Romania strongly supports an instrument on this topic but is cautious about the language and substance. Romania is concerned that national and EU legislation would mean different legally binding instruments. She sees a difficulty in drawing a line between crossborder and domestic cases in criminal proceedings

and thinks that it would be difficult to explain why there were different legal proceedings if that were to be the case.

Johan Callewaert (ECtHR): The Council of Europe acknowledged that the ECtHR was too slow at the moment but has decided to change the order in which cases are dealt with. Up until now they were dealt with in the order that they came in but from now on cases will be given a priority-based order. So important cases and those where there would be a danger in delay will be prioritised. The reflection paper talks of the ECtHR and the ECHR needing a higher profile yet three quarters of disputes going to the ECtHR are clearly unfounded so possibly their profile is too high. If a new instrument is drafted it is important to ensure that the text is compatible with the ECHR otherwise any doubts about standards and compatibility between the ECHR and the new instrument would give rise to a big number of disputes. The Council of Europe is in favour of an EU instrument if it is fully in line with the ECHR and the standards set are not lowered.

Eberhard Siegismund (German Ministry of Justice): He sees the problem as not being legal issues but being political will.

Lorenzo Salazar (Italian Ministry of Justice): Italy is against limiting the scope of a future instrument to crossborder cases alone because of the need to ensure the principle of equality between citizens. Differentiating between crossborder and domestic cases would be absurd.

Vania Costa Ramos (Law Faculty of Lisbon University): She argued that as all citizens of the EU are citizens of the EU regardless of their nationality there should be the same rights for all. There should be a decision setting out a list of basic rights and this would have to include all scenarios. If more than one jurisdiction may apply, solutions could be pinpointed. There could be practical mechanisms, e.g. with legal assistance. If it is a national case, then the accused would not need a lawyer in a different country. Crossborder cases are more complicated and sometimes might need specific mechanisms to deal with that.

Professor Ed Cape: The people implementing the rights will probably be ordinary policemen, lawyers and judges. In England and Wales for example, it takes time for rights (e.g. for a recording to be made) to become entrenched in daily practice. If the instrument is confined to crossborder cases then the policeman who deals with them will probably come across them rarely and so a lot of mistakes will be made. This will be because the policeman has not recognised it as a crossborder case or is not aware of the special rules, which could lead to more litigation and appeals.

Zuzana Cernecka (Czech Ministry of Justice): The legal basis continues to be a key question for the Czech Republic. Procedural rights may be regulated at EU level only for crossborder cases – this is purely a question of the legal basis. If it is limited to crossborder cases then the Czech Republic is willing to cooperate and is open to more discussion.

Possible ways to proceed

Signe Ohman (Swedish Ministry of Justice): The protection of individuals in criminal proceedings is a top priority for the Swedish presidency of the EU. There seems to be an understanding that mutual trust and procedural safeguards go hand in hand – that was clear

from Gisèle Vernimmen's presentation. We need to strengthen procedural safeguards to increase mutual trust and we need to focus more on the rights and needs of individuals.

There is more free movement than ever before and we need to address the problems that can arise because of increased mobility. The language of proceedings and understanding the system in that other country are key.

It is time to resume discussion on procedural rights in criminal proceedings and to strengthen these rights. It is a delicate and complicated issue. There were three years of discussion over the last proposal. We think that a step by step approach is best, focusing on a few rights at each step so that we can go into real depth as regards the problems. We think we should work with practical measures. We believe that we should start with the right to translation and interpretation and then continue with other rights (e.g. to a defence, to information etc.) We need political agreement on a strategy and we are thinking of putting a roadmap forward in July. This approach will minimise the risk of failure. There is a conference in Stockholm, from 22 to 23 July, on justice in the EU from the citizens' perspective. It is about citizens' access to criminal justice and rights in criminal proceedings.

Priscilla Guillotin De Corson (Fair Trials International): She was interested in the order of the Swedish proposals. She asked how many Framework Decisions would be adopted during the Swedish presidency of the EU and what guarantees there were that something would be done in the next presidencies.

Signe Ohman (Swedish Ministry of Justice): Ideally Sweden would adopt a bunch of Framework Decisions during its presidency but fears that that will not be possible. Sweden hopes that agreement on the first step is possible and thinks that a roadmap will ensure that we deal with all the fundamental procedural rights. Hopefully future presidencies will make it a top priority too.

Eberhard Siegismund (German Ministry of Justice): Siegismund supported the Swedish initiative and approach although he would have preferred a broader approach. A key question is how to involve future presidencies. There also needs to be a parallel approach with practical measures being linked to the formal approach.

Peter Csonka (DG JLS): The Commission will submit a proposal on practical measures, drawing inspiration from a paper by the six countries that suggested an alternative to a Framework Decision earlier. He asked future presidencies (Spain and Belgium) what they would do.

Spain: Spain is convinced that this matter needs to be dealt with. The delegate could not give Spain's official position for its future presidency but assured participants that the country would do all it can to make progress.

Serge de Biolley (Belgium's Permanent Representation to the EU): If the Swedish presidency process becomes dynamic, Belgium will be behind it. The delegate would imagine it to be one of the top priorities of the presidency but could not commit to that.

Eszter Viczko (Hungarian Ministry of Justice): Hungary supported the proposal but could not say what the presidency's proposals would be.

Lorenzo Salazar (Italian Ministry of Justice): Italy would have hoped for something more ambitious but, given the result last time, the Swedish approach may turn out to be a good one. The delegate hoped that protection of European citizens would be a fundamental part of the Stockholm programme.

Peter Csonka (DG JLS): The Stockholm programme will be based largely on a Commission Communication and defendants' rights are an important priority in that.

Bernhard Weratschnig (Austria's Ministry of Justice): Austria is in favour of resolving the issue of interpreting and agrees with the Swedish proposal.

Claudia Gualtieri (European Parliament LIBE Committee): A proposal for a recommendation (focussing on fundamental rights, mutual recognition, the evaluation of justice and judicial training) is being discussed in the LIBE Committee with a vote next week and then more discussion in plenary in May. The starting point is that EU citizens must be treated in the same way. The recommendation makes a list and refers to presumption of innocence, a Letter of Rights, legal advice, information about the reasons for the charges, access to an interpreter and documents being available in a language that the citizen understands.

Rosalind Campion (UK's Office for Criminal Justice Reform): She asked when the European Parliament's recommendations were likely to be ready. She sees the Swedish approach, to take a real problem and solve it with detailed legislation and practical measures and not just replicate the ECHR, as very ambitious. She asked for the areas in the roadmap to have an impact assessment on the proposals put forward.

Peter Csonka (DG JLS): There is an obligation to do an impact assessment and this meeting is part of it.

Claudia Gualtieri (European Parliament LIBE Committee): The recommendations are to be voted on in committee next week and go to plenary in the first week of May.

Signe Ohman (Swedish Ministry of Justice): Sweden sees its approach as very ambitious – a legislative document and a document with practical measures only on interpreting and translation. The old Framework Decision proposal had a few articles on the right to interpreting and translation and more or less repeated what is in the ECHR in the end.

Markko Kunnapu (Estonia's Ministry of Justice): Estonia supported the Framework Decision proposal and would support the new initiative.

Frederic Baab (France's Ministry of Justice): France is in favour of an instrument that would be at least at the level of the standards set by the ECHR and by the ECtHR itself. Sweden has chosen to focus on some aspects and has wisely chosen a relatively uncontroversial idea, the right to be able to understand what you are being accused of in a criminal procedure, i.e. the question of translation and interpreting. For the other rights, we need more refined analysis and we need a roadmap.

As for the domestic vs crossborder proceedings issue, supposing new evidence came to light in another country, two different judges in France might come to two different decisions as to whether to ask the other country for the evidence. It is the same dossier but with two different treatments. If decisions are taken on a case by case basis like this, this

shows the difficulty of putting an instrument into practice. It is important to decide which criteria to take to determine whether a given case is a crossborder one or not.

Zigmund Dundurs (Latvia's Ministry of Justice): In principle, Latvia is very supportive. It is important not to distinguish between crossborder and national cases. The Swedish approach to focus on individual rights seems very reasonable.

Kirsi Pulkinnen (Finland's Ministry of Justice): Finland is very happy to hear that Sweden is continuing the work on procedural rights and thinks that the 'one right at a time' approach by Sweden is a good one.

Gert Vermeulen (Ghent University): Procedural rights are particularly relevant in domestic cases and not so much in crossborder cases. It is primarily domestically where something needs to be done. With regard the French example, perhaps minimum standards should be agreed for particular areas (e.g. house search). One idea is that, if there are two or three MS involved in a case where a house search or phone tap is needed, the agreement could be that the best rights from the three MS accrue to the individual. That would avoid a binding minimum instrument for the whole EU.

Peter Csonka (DG JLS): Peter Csonka wanted to know how this could be done, e.g. using a form with open boxes to be ticked if certain rights are allowed.

Gert Vermeulen (Ghent University): Gert Vermeulen suggested a step by step approach so that, when a piece of evidence was obtained from abroad, it would be deemed as acceptable evidence if it lived up to the standards of the ECHR. If there were need for a phone tap abroad, the approach could be that the better rights [between the two countries involved] apply.

Peter Csonka (DG JLS): More time is probably needed to write this paper. The Commission plans to continue working on evidence and will table a Green Paper on evidence, including the problem of admissibility. We will see if we need evidence-related guarantees, e.g. for surreptitious techniques such as phone taps.

Anna Ondrejova (Slovakia's Ministry of Justice): Slovakia is open to talk with the Commission and the Swedish presidency so that this legislation reaches a balanced solution. Sweden's focussed approach is interesting.

Professor Erik Hertog (Lessius University College): Speaking on behalf of legal interpreters and translators, Professor Erik Hertog said that mutual trust between MS cannot work if it is not built on mutual trust in communication (including interpreting and translation) between MS. A reference to interpreting and translating was included in the Tampere Programme in 1998 and in the 2003 Green Paper. The latter referred to training, certification, quality and a code of ethics – so everything was included and this was a very positive document. However, the Framework Decision proposal on procedural rights was reduced to a few general comments on the right to an interpreter for example. Legal interpreters and translators are now ready and welcome the Swedish proposal.

They want an instrument that is linked to quality (e.g. quality assurance and monitoring of quality) to guarantee mutual trust. Mention in the Swedish proposal should be made to 'the right to a competent interpreter'. Quality refers not just to training but to a comprehensive account of what MS can do to have a quality interpreter. A report from the Reflection

Forum on Multilingualism and Interpreter Training shows what interpreters would like to see in the Swedish proposal. We think the step by step approach or 'salami tactic' taken by Sweden is a good one because putting the whole package of rights on the table will not work. If we start with the right to translation/interpretation, this could create momentum for the rest of the package. A roadmap would allow for subsequent EU presidencies to deal with one right each. Interpreters and translators are very positive about the content of the Swedish proposal and because it is Sweden, which has a cast iron reputation regarding interpreters and translators – the Stockholm Institute is an excellent training centre.

There is an idea to create a single register of interpreters and translators as part of e-Justice plans. But linking up registers does not make sense unless criteria are set as to what the abilities of the interpreters and translators are. There is a conference on 26-28 November in Antwerp, where a European Legal Interpreters' and Translators' Association (EULITA) is due to be set up, and to which participants are welcome.

Peter Csonka (DG JLS): Peter Csonka made it clear that the proposal would be coming from the Commission (not Sweden) and that the roadmap would be coming from Sweden. The two should be seen in combination. The right would be about either a right to a qualified interpreter and translator or, by merging these rights, the right for the accused to understand the charge and follow the proceedings. He asked what else translators and interpreters want to see in the legislation/best practice paper and if there were figures as to the costs for these services at an average trial. He added that paying interpreters and translators would need state funding and possibly EU funding.

Professor Erik Hertog (Lessius University College): Professor Erik Hertog did not have figures to hand but referred to a lengthy passage on the costs in a Council document on the costs of justice. Concerns of MS include the cost of training, of monitoring quality and of paying translators and interpreters. Training does not need to cost that much – there are lots of strategies to keep down initial training costs. In one system, candidates can be tested in their language skills before being admitted to a course that includes legal practitioners before being tested again at the end of the course. In terms of best practice, the report on interpreter training shows what interpreters want to see achieved in practice. The EU's Multilingualism Commissioner Leonard Orban is understood to be considering a similar report for translators.

Peter Csonka (DG JLS): Peter Csonka was appreciative of any help that Professor Hertog could give on the cost issue.

Claudia Gualtieri (European Parliament): A step by step approach is good but Claudia Gualtieri wondered if the Commission proposal would home in on specific aspects such as a register and the costs of interpretation. High quality interpreters and translators are needed. As a judge in Venice, she had encountered the problem of finding interpreters for Chinese, especially because there are hundreds of dialects. The solution had been for police to scour Chinese restaurants to find someone speaking a particular dialect. She wondered if the instrument would stipulate that all interpreters and translators would have to be on an official register and, if so, what would happen with the cases where individual dialects were needed.

Peter Csonka (DG JLS): These questions will be covered in impact studies. Perhaps they will be looked at in best practice.

Ivanka Ivanova (Open Society Institute): Ivanka Ivanova is involved in monitoring police custody and has encountered a serious problem with rare languages in Bulgaria. It is easy to find certified interpreters for languages such as English, French or German but not so for languages such as Finnish or Romanian. The need for such languages has risen due to growing numbers of, for example, Finnish and Romanian tourists. Police stations use different creative solutions, such as asking local teachers for help. Her question was if police stations/prosecutor services were expected to have a full list of interpreters covering all potential languages that could be encountered or could restrict the implementation of safeguards to the most common languages.

Ivanka Ivanova said that arguments such as that the ECtHR is overburdened and that the ECHR is not implemented should lead to discussion on how to reduce the burden and improve implementation rather than having a new legally binding instrument. A new instrument would be worth having if there is proof that EU instruments in criminal matters are leading to violations of rights of individuals. In the justification of the new instrument it is important to take into account traditional procedural rights and other safeguards, for example medical help during detention. A step by step approach to procedural rights is a good approach, starting with the rights that are more violated in the instruments that we have and the right to interpretation is one of those. There is also an issue relating to mutual recognition and the exchange of data between MS. Different MS have different standards of data protection. There is a concern that the police and/or prosecutors may use data to prosecute other crimes or profile people.

Peter Csonka (DG JLS): Access to medical help, especially for poorer suspects, was in the Commission's original 2003 proposal but was thrown out by MS. But the issue will come back. As for the problem of finding qualified interpreters at short notice, at night and in exotic languages, there is no easy solution here.

Trevor Stevens (Committee for the Prevention of Torture): Efforts are being made in Strasbourg to improve the ECtHR situation but this is unlikely to make the machinery in Strasbourg perfect and so there is a need for an EU instrument. He was very interested in the roadmap and suggested to Sweden that the next issue to address should be access to a lawyer as it is a fundamental safeguard to prevent ill treatment. Issues here could be when a suspect can have access to a lawyer, for how long, what the system is for appointing a lawyer, the lawyer's status in a police station and the quality of assistance (e.g. just a trainee or someone more experienced).

Minimum standards must bear in mind evolving case law in this area (e.g. the *Salduz* case) so a clause would be needed to take case law into account.

Peter Csonka (DG JLS): Peter Csonka asked if access to a qualified translator/interpreter was a problem encountered by the CPT.

Trevor Stevens (Committee for the Prevention of Torture): Trevor Stevens sees many examples of what Claudia Gualtieri spoke about and said that, although unsatisfactory, there was a need for ad hoc arrangements for interpreters. Recognising qualified interpreters is very important but the problem is how best to organise this because it costs a lot of money. He fears that ad hoc arrangements will be necessary and that they are sometimes better than no interpreter at all.

Frederic Baab (France's Ministry of Justice): On access to lawyers, it is important to realise that there are complexities, for example that the term 'garde à vue' is not the same in Germany as in France. In Germany, it comes at a later stage in the procedure (at the official notification of accusations stage). If the issue of access to a lawyer is addressed then it is important to broaden this to access to the file as, if the lawyer has no access to the file, the suspect can perhaps do without the lawyer. On interpreting/translating, France suggested that the Commission kept to general provisions. Going into details such as how an expert is put on a register may lead to difficulties and a possible impasse because many countries will refuse to change their systems without understanding the need to do it.

Holger Matt (European Criminal Bar Association): Interpreting and translating is very important so we need clear and uniform rules as far as possible. ECBA will support this initiative. The need for an additional legally binding instrument is justified because we know that there are lots of shortcomings in procedural rights and we recognise that the ECtHR cannot deal with all these shortcomings. The relevance of a new instrument is that then MS can guarantee that their citizens are dealt with properly in the other 26 MS. ECBA offered all MS, the Commission and the European Parliament its assistance and expertise.

Natacha Kazatchine (Amnesty International): Amnesty International (AI) has been supporting the idea of a new instrument from the beginning. The Swedish EU presidency's belief that the EU bears responsibility to protect the rights of individuals is the starting point for AI. AI has denounced Italy's security package, suspects being held incommunicado in detention in Spain and violence by law enforcement authorities and sees a lack of redress for victims of this.

AI supports a wide instrument, covering rights, monitoring of rights, crossborder and domestic cases and for it to be binding on MS. Legislation will not solve everything but will set benchmarks that will hold MS to account and should foresee oversight mechanisms. AI hoped for a more comprehensive approach from Sweden as, for example, it is difficult to have an agreement on translation/interpretation without having an agreement on what documents are given to the suspect. Rights are interlinked and some rights run the risk of being left aside. The first right to be looked at should not become an end in itself. AI wants a clear and binding agenda with timelines agreed by MS. It should not preclude the EU from carrying on with other rights, including practical measures. It should not stop reflection on monitoring/assessing what is going on in MS.

Peter Csonka (DG JLS): The Commission is committed to continuing work beyond the first proposal.

Signe Ohman (Swedish Ministry of Justice): MS want added value and not to repeat what is in the ECHR so Signe Ohman believes that MS will be willing to discuss details. Failure with the first procedural right would mean failure with the broader initiative so she was anxious to avoid failure. The first right is the first of several steps and is not a single initiative on interpreting. That is the idea of the roadmap.

Professor Erik Hertog (Lessius University College): Professor Erik Hertog was anxious to stress that he did not want to give the impression that translators/interpreters were the top priority but pointed out that that lawyers, judges or police cannot do important tasks without the support of a translator and interpreter that they can rely on. In terms of training and education, a study has shown that over half of MS have no form of training for legal

interpreters. Yet legal translators and interpreters are used every day. The problem of rarer languages needs a solution (although each MS can cover 80-85% of its needs with 10 to 15 languages). A solution is set out in the report on training interpreters and involves language-independent training. Training and a register should be what the Commission proposal is based on and these should not incur undue costs. On training, if one looks at best practice in the report, most cases can use a trained interpreter but, where they cannot, then it is important to justify it. For example, if detention can be for only 24 hours and no sworn interpreter with a particular language is available, then it is justifiable to make do as best one can. MS should have a register of trained interpreters, possibly split into those with a basic or high level of training.

Miroslav Krutina (Defence lawyer): Miroslav Krutina welcomed the move to support the human rights of defendants and victims in the EU. He liked the idea of the Letter of Rights and gave examples of ones that the Czechs had for witnesses and for defendants. But they were too complicated to understand and the Czech bar has drafted its own model.

Susan Clements (UK Law Societies): The UK Law Societies Joint Brussels Office calls for binding minimum procedural rights across the board, both cross-border and domestic, and not a lowering of current standards. They emphasise the importance of effective, accessible and timely means of redress for individuals at MS level. Among other things, minimum procedural rights applicable throughout Member States may lead to defendants having more confidence in the process in other Member States and therefore for example consenting to their return under the European Arrest Warrant. Minimum procedural rights should provide clarity and thereby potentially remove pointless appeals.

Gert Vermeulen (Ghent University): Gert Vermeulen was concerned that the debate was moving too much towards the issue of quality of interpreters and translators. While important, he could not see its connection with procedural rights.

Nadejda Hriptievschi (Moldova's Public Defender's Office): Nadejda Hriptievschi is very supportive of an EU instrument and does not understand the concern about having the ECtHR as the ECtHR is a last remedy. Legal safeguards are not a priority for governments and so the EU must come up with measures here. If a step by step approach is the only way then that is alright.

Lorenzo Salazar (Italian Ministry of Justice): The skills and costs [of interpretation and translation] are the main points for a future proposal which the Commission and Sweden are proposing. It is important to take into account the different expectations of MS. The Commission must proceed pragmatically and the Swedish approach is probably a good thing. Politically, care is needed not to disappoint expectations and care is needed with the issue of regulating a profession with high costs. If it does go in this direction, the Commission must pinpoint its role in terms of financial support. The Commission has a role to play in the training of interpreters.

Deirdre Duffy (Irish Council for Civil Liberties): Procedural rights for suspects are very much separate from those for victims but are connected. If MS want added value and proof, she suggested that MS talk to practitioners in MS.

Priscilla Guillotin De Corson (Fair Trials International): Priscilla Guillotin De Corson supported the protection of all procedural rights but said that she was happy to work with

interpretation first. She pointed to a practical problem that, where there was no access to a lawyer, a suspect would hope for legal advice from the interpreter but that this was not the interpreter's role. To facilitate the roadmap, she suggested putting in place pilot projects and training with regard to access to a lawyer to prepare the ground for the next measures. She is ready to provide MS with studies of cases to show the needs and problems of citizens when faced with systems in foreign countries.

Matevz Pezdirc (Slovenian Ministry of Justice): It would be useful if all criminal and procedural codes were translated. If they were in three major languages or all languages, that would help practitioners and citizens when entering into discussion with the police or authorities. If MS want to do something on procedural rights, they must make some concessions, change legislation and provide finance if they are to go further than the ECHR.

Peter Csonka (DG JLS): Peter Csonka concluded the meeting with some preliminary conclusions. He understood that there was support for the 'salami approach'/long-term vision but that some MS still needed to be convinced. He noted the reluctance of the Czech Republic and other MS on it being a broader instrument covering domestic and crossborder cases. He said that care must be taken for the new instrument not to fall below the standards of the ECtHR. He stressed that rights were not just for suspects but also for victims and the Commission will work on victims' rights too. The Commission is preparing a new proposal amending the 2001 Framework Decision on victims' rights and two other Framework Decisions, on the trafficking of human beings and the sexual exploitation of children.

ANNEX 3

[excerpt from Study on the transparency of costs of civil judicial proceedings in the European Union", Final Report pages 198 – 201]

Criteria used in determining rates relating to the intervention of a translator / interpreter during the procedure

When the judge requires for the submitted documents to be translated, translators' fees can be calculated on different bases:

Depending on the number of characters: Generally the scale is set for 55 characters that correspond to a line. It is used, for example, in **Germany**, **Austria** and **Luxembourg**. Significant differences in rates can be observed. In Austria, costs vary between 1.09 and 2.03 Euros (roughly the same rates in Luxembourg), while in Germany they vary between 1.25 and 4 Euros for the same number of characters.

Depending on the number of words: Costs vary between 0.05 and 0.20 Euros on average. This is the case of **Bulgaria**, **Denmark**, **Spain**, and **Finland**. In other countries like **Sweden**, **The Netherlands** and **Malta**, the rates can go from 0.49 Euros / word and up to 1.49 Euros / word in the **United Kingdom**.

Depending on the number of pages: This calculation basis is the most commonly used which explains the differences in tariffs. On average, prices vary between 8.50 and 24 Euros per page in **Bulgaria**, **Estonia**, **Greece**, **Italy**, **Latvia**, **Lithuania**, **Malta** and **Slovakia**. In Scandinavian countries such as **Sweden**, **Denmark** and **Finland**, the average cost is 40 Euros per page. **Slovenia** in rather expensive as the cost can reach 50.49 Euros per page.

Depending on the number of hours: Concerning these tariffs, there is no real similarity in what is applied.

- **France** → 15 to 20 Euros per hour;

- **Luxembourg** → average : 43.58 Euros / hour;

- **Czech Republic**→ from 3.74 to 13.10 Euros per hour;

- **Romania** → minimum of 5.93 Euros per hour.

It must be said that **Ireland** is the only country where a rate based on the number of days is implemented (about one hundred Euros per day). The same appears in the data provided by the National Experts. In **Cyprus** the average fees charged by translators during the proceedings are 85 Euros. These vary from 68 to 102 Euros for a procedure. When an interpreter is required to translate the words of any parties or the witnesses' and to explain the course of the proceedings to those concerned, the fees are calculated on an hourly basis depending on the number of days during which the interpreter was needed. The charges are all different. Some other factors may affect interpreters' fees such as simultaneous or delayed translation, or the specificity of language (sign language, communication with deaf, blind and hearing-impaired; **Slovakia)**

The same is true when the service takes place outside of normal working hours (between 8 pm and 8 am), outside the normal working days (Saturdays, Sundays and public holidays), during holidays and when the translators' and the interpreters' work must be carried out in an emergency situation. In these cases, costs may be increased from fifty percent to one hundred percent (e.g.: **Romania, Slovenia**).

The difficulty, the specificity of the language translated (translator or interpreter), as well as the technicality of the terminology of the document to be translated have also a bearing on the fees. In **Greece**, for instance, costs can vary significantly depending on the nature of the documents like birth or marriage certificates, bank statements, personal correspondence or political documents, medical, economic or scientific reports or even autopsy reports and court decisions.

In **Lithuania**, **Slovenia**, **Slovakia** and **Austria**, the difficulty and rarity of the language is a readily accepted criterion in setting rates. The costs are always lower for European languages like English and French whereas languages such as Japanese, Chinese or Arabic generate higher costs.

The case of **Slovenia** presents a particular feature because distinction is made between the translators and interpreters appointed by the Court and those chosen by the party. Costs vary depending on this distinction. When they are appointed by the Court, prices will be fixed by the Court. If it is a party who employ a translator or interpreter, the fees will result from an agreement between the parties and the translator or interpreter. On average, in the case of an appointment by the Court, the costs vary between 25.25 and 41.31 Euros / page while in the other case they vary between 25.87 and 50.49 Euros / page.

Additional compensation: In some countries provisions are made in the form of allowances or compensations for expenses covering the cost of daily life. These allowances can cover the costs of transport, accommodation and catering. For example, in **Estonia**, the sum of three Euros per day minimum is granted for meals and thirteen Euros per day for housing costs. Some similar amounts are granted in **Italy**, **Lithuania**, **Poland**, **Romania** and **Slovakia**.

ANNEX 4

Table 1. Number of non-nationals in each EU Member States[46]

COUNTRIES	2000	2001	2002	2003	2004	2005	2006	2007
Austria	758,024	766,055	731,631	755,124	765,303	88,609	814,065	826,013
Belgium	853,369	861,682	846,734	848,396	860,287	870,862	900,500	932,161
Bulgaria	25,634	…	…	…	…	…	26,000	25,500
Cyprus	57,800	61,600	…	…	83,500	98,100	98,000	118,100
Czech Republic	228,862	180,261	163,805	179,154	195,394	193,480	258,360	296,236
Denmark	259,361	258,630	266,729	265,424	271,211	267,604	270,051	278,096
Estonia	274,309	…	…	…	…	…	242,000	236,400
Finland	87,680	91,074	98,577	103,682	107,003	108,346	113,852	121,739
France	…	…	…	…	…	3623,063	3510,000	3650,100
Germany	7343591	7296817	7318628	7335592	7334765	7287,980	7289,149	7255,949
Greece	…	761,438	…	…	891,197	…	884,000	887,600
Hungary	153,125	115,809	116,429	115,888	130,109	143,774	156,160	167,873
Ireland	126,533	155,528	187,200	215,473	198,732	255,400	314,100	452,300
Italy	1270553	1464589	1334889	1549373	1990159	2402,157	2670,514	2938,922
Latvia	619,611	581,508	556,801	532,534	514,966	487,212	456,758	432,951
Lithuania	…	35,094	…	…	…	32,327	32,862	39,687
Luxembourg	159,400	162,285	…	170,700	174,200	177,400	181,800	198,213
Malta	8,558	8,890	9,564	10,358	11,000	11,999	12,000	13,877
Netherlands	651,532	667,802	690,393	699,954	702,185	699,351	691,357	681,932
Poland	…	…	700,329	…	…	…	700,000	54,883
Portugal	191,143	207,607	224,932	238,746	…	…	276,000	434,887

[46] http://epp.eurostat.ec.europa.eu/tgm/table.do?tab=table&init=1&plugin=0&language=en&pcode=tps00157

COUNTRIES	**2000**	**2001**	**2002**	**2003**	**2004**	**2005**	**2006**	**2007**
Romania	…	…	178,154	…	25,645	25,929	25,993	26,069
Slovakia	…	…	…	29,854	29,855	22,251	25,563	32,130
Slovenia	42,524	42,279	…	44,693	45,294	44,285	48,968	53,555
Spain	923,879	1370657	1977946	2664168	2772200	3371,394	4002,509	4606,474
Sweden	487,175	477,312	475,986	474,099	476,076	481,141	479,899	491,996
United Kingdom	2459934	…	…	2760031	2941400	3066,055	3425,000	3659,900
Total								

Note: (…) = data not available

Table 2 - Population and percentage of non-nationals in each Member State, number of criminal proceedings (incomplete) and serious crimes recorded by the police in 2006 in each Member State

COUNTRIES	Population of each Member State 2007[47]	Number of Non-nationals in each MS 2007[48]	% of Non-nationals in each MS 2007[49]	Number of criminal proceedings in 2007	Serious Crimes Recorded by the Police 2006 (excluding misdemeanours)[50]
Austria	8,298,923	826,013	10%		589,495
Belgium	10,584,534	932,161	8.8%		1,012,004
Bulgaria	7,679,290	25,500	0.3%	37,977[51]	136,410
Cyprus	778,684	118,100	15.2%	107,997 (2006 statistics)[52]	7,923
Czech Republic	10,287,189	296,236	2.9%	78,545[53]	336,446
Denmark	5,447,084	278,096	5.1%		425,093
Estonia	1,342,409	236,400	17.6%		51,834
Finland	5,276,955	121,739	2.3%		324,575
France	63,392,140	3650,100	5.8%		3,725,588
Germany	82,314,906	7255,949	8.8%	5,806,781 (2006 figures)[54]	6,304,223
Greece	11,171,740	887,600	7.9%		463,750
Hungary	10,066,158	167,873	1.7%	426,914[55]	425,941

[47] http://epp.eurostat.ec.europa.eu/tgm/refreshTableAction.do?tab=table&plugin=1&pcode=tps00001&language=en

[48] http://epp.eurostat.ec.europa.eu/tgm/table.do?tab=table&init=1&plugin=0&language=en&pcode=tps00157

[49] http://epp.eurostat.ec.europa.eu/portal/page?_pageid=1996,45323734&_dad=portal&_schema=PORTAL&screen=welcomeref&open=/t_popula/t_pop/t_demo_pop&language=en&product=REF_TB_population&root=REF_TB_population&scrollto=0

[50] http://epp.eurostat.ec.europa.eu/portal/pls/portal/!PORTAL.wwpob_page.show?_docname=702125.PDF

[51] http://www.nsi.bg/SocialActivities_e/Crime_e.htm

[52] http://www.mof.gov.cy/mof/cystat/statistics.nsf/All/50F489DBBAA9E96DC22575080024ACA9?OpenDocument&sub=3&e=

[53] http://www.czso.cz/csu/cizinci.nsf/engt/1D003D9229/$File/c08t01.pdf

[54] Addition of figures for criminal proceedings at first instance, public prosecution and appellant instance stage. http://www.destatis.de/jetspeed/portal/cms/Sites/destatis/Internet/EN/Content/Statistics/Rechtspflege/Gerichtsverfahren/Tabellen/Content75/Gerichtsverfahren,templateId=renderPrint.psml

COUNTRIES	Population of each Member State 2007[47]	Number of Non-nationals in each MS 2007[48]	% of Non-nationals in each MS 2007[49]	Number of criminal proceedings in 2007	Serious Crimes Recorded by the Police 2006 (excluding misdemeanours)[50]
Ireland	4,312,526	452,300	10.5%	440,939[56]	103,178
Italy	59,131,287	2,938,922	5.0%		2,771,490
Latvia	2,281,305	432,951	19.0%		62,328
Lithuania	3,384,879	39,687	1.2%		75,474
Luxembourg	476,187	198,213	41.6%		25,913
Malta	407,810	13,877	3.4%		16,527
Netherlands	16,357,992	681,932	4.2%	1,276,000[57]	1,218,447
Poland	38,125,479	54,883	0.1%	2,669,300[58]	1,287,918
Portugal	10,599,095	434,887	4.1%		398,959
Romania	21,565,119	26,069	0.1%		232,658
Slovakia	5,393,637	32,130	0.6%		115,152
Slovenia	2,010,377	53,555	2.7%		90,354
Spain	44,474,631	4606,474	10.4%	936,789[59]	2,267,114
Sweden	9,113,257	491,996	5.4%		1,224,958
United Kingdom	60,816,701	3,659,900	6.0%	148,800 (Scotland)[60] 1,732,506 (England and Wales)[61]	5,968,674

[55] http://portal.ksh.hu/pls/ksh/docs/eng/xstadat/xstadat_annual/tabl2_08_02ie.html
[56] http://www.courts.ie/Courts.ie/library3.nsf/(WebFiles)/AABB16FA5813D4958025748900572B22/$FILE/Courts%20Service%20Annual%20Report%202007%20-%20Pt%202%20.pdf
[57] http://statline.cbs.nl/StatWeb/publication/?VW=T&DM=SLEN&PA=37340eng&D1=0-4,10-20&HD=090429-1117&LA=EN&HDR=T&STB=G1
[58] http://statline.cbs.nl/StatWeb/publication/?VW=T&DM=SLEN&PA=37340eng&D1=0-4,10-20&HD=090429-1117&LA=EN&HDR=T&STB=G1
[59] http://www.ine.es/jaxi/tabla.do
[60] http://openscotland.gov.uk/Publications/2009/04/27103325/5
[61] http://www.justice.gov.uk/publications/criminalannual.htm

Table 2 (a) Figures on Three Countries of the Number of Prosecuted, Accused or Convicted in 2007 and from that the Number who were Non-Nationals

	Accused or Convicted	No of Accused or Convicted who were Non-Nationals.
Austria[62]	**247,021 (Accused 2007)**	**68,941 (28% of Accused)**
Czech Republic[63]	**78,545 (Prosecuted 2007)**	**3,461 (4.4% of Prosecuted)**
	67,186 (Accused 2007)	**2,999 (4.5% of Accused)**
	75,728 (Convicted 2007)	**4,690 (6.2% of Convicted)**
France[64]	**654 229 (Convicted 2007)**	**145,901(22.3% of Convicted)**

Table 3. **Number of non-nationals in the prisons of each EU Member States and Number of those which are then Pre-Trial Detainees**

(First figure is number of foreign Prisoners and second figure is of foreign pre-trial detainees)

COUNTRIES	**2000**[65]	**2001**	**2002**[66]	**2003**	**2004**[67]	**2005**[68]	**2006**[69]	**2007**[70]
Austria	2,077		2,475			3,979 & 1,199	3,768 & 1,207	3,917 & 1,310
Belgium	3,501		3,785			3,860 & 1,670	4,148 & 1,677	4,234 & 1,753
Bulgaria	141		190		217	262 & 131	233 & 91	211 & 9

[62] http://www.statistik.at/web_en/statistics/social_statistics/criminality/recorded_crimes_by_the_police/index.html

[63] http://www.czso.cz/csu/cizinci.nsf/engt/1D003D9229/$File/c08t01.pdf

[64] http://www.insee.fr/fr/themes/tableau.asp?reg_id=0&ref_id=NATTEF05313

[65] http://www.coe.int/t/e/legal_affairs/legal_co-operation/prisons_and_alternatives/statistics_space_i/pc-cp%20_2001_%202%20-%20e%20_SPACE%20I%20-%202000%20final%20version_.pdf

[66] http://www.coe.int/t/e/legal_affairs/legal_co-operation/prisons_and_alternatives/statistics_space_i/PC-CP(2003)5E-%20Space-I.pdf

[67] http://www.coe.int/t/e/legal_affairs/legal_co-operation/prisons_and_alternatives/statistics_space_i/Council%20of%20Europe_SPACE%20I%20-%202004%20Nov05%20-%20E.pdf

[68] http://www.coe.int/t/e/legal_affairs/legal_co-operation/prisons_and_alternatives/statistics_space_i/Council%20of%20Europe_SPACE%20I%20-%202005%20-%20final%20version.pdf

[69] http://www.coe.int/t/e/legal_affairs/legal_co-operation/prisons_and_alternatives/statistics_space_i/pc-cp%20(2007)%2009%20rev3%20-%20e%20(SPACE%202006)%2023-01-08.pdf

[70] http://www.coe.int/t/e/legal_affairs/legal_co-operation/prisons_and_alternatives/statistics_space_i/PC-CP_2009_%2001Rapport%20SPACE%20I_2007_090324_final.pdf

COUNTRIES	2000[65]	2001	2002[66]	2003	2004[67]	2005[68]	2006[69]	2007[70]
Cyprus			148		264	241 & 57	290 & 72	357 & 39
Czech Republic	2,620		1,743			1,652 & 721	1,378 & 510	1,392 & 541
Denmark	557		561		621	754 & 363	710 & 349	654 & …
Estonia	146		1,660		1,456	1,780 & 466	1,740 & 483	1,413 & 423
Finland	168		293		264	286 & 114	300 & 98	301 & 86
France	10,553		11,518		12,307	11,820 & …	11,436 & …	12,341 & …
Germany			23,509		22,474	22,095 & 6,954	21,263 & 6,483	20,485 & 5,569
Greece	3,892		3,800			3,990 & …	5,902 & 1,417	
Hungary	762		836		647	631 & …	583 & 109	544 & …
Ireland	…		242				395 & 135	474 & 214
Italy	15,258		16,937		17,642	19,656 & 9,655	12,360 & 9,070	16,643 & 12,067
Latvia	35		42		40	26 & …	59 & 26	84 & …
Lithuania	122		133		55	67	78	80

COUNTRIES	**2000**[65]	**2001**	**2002**[66]	**2003**	**2004**[67]	**2005**[68]	**2006**[69]	**2007**[70]
						& 14	& 32	& 26
Luxembourg	233		243		409	495 & 273	568 & 290	546 & 255
Malta			99			91 & 35	136 & 72	
Netherlands	1,026		4,733		5,466	5,818 & 1,666	5,339 & 1,306	4,246 & 1,315
Poland	1,409		1,306		1,026	750 & 408	659 & 363	629 & 324
Portugal			1,647			2,386 & 1,005	2,552 & 1,071	2,371 & 878
Romania	299		374		312	274 & 46	260 & 31	243 & 23
Slovakia	187		179		211	220 & 147	185 & 96	165 & 102
Slovenia	188		171		149	144 & 69	151 & 69	140 & 68
Spain	8,470		12,961		14,119	18,436 & 7,285	20,018 & 7,792	18,474 & 7,151
Sweden	1,211		1,390		1,460	1,475 & …	1,533 & …	1,424 & …
UK [just overall figures for UK](England & Wales	5,586				8,941	9,650 & 2,271	10,879 & 1,532	11,310 & 1,602

COUNTRIES	2000[65]	2001	2002[66]	2003	2004[67]	2005[68]	2006[69]	2007[70]
	111		79		90	71 & 15	133 & 64	206 & 93
	…		16		10	38 & 15	58 & 45	

Note: (…) = data not available

Table 4 Percentage of non-nationals in the Prisons of each EU Member States and Percentage of those which are then Pre-Trial Detainees

(First figure is % of foreign Prisoners and second figure is of foreign pre-trial detainees)

COUNTRIES	2000[71]	2001	2002[72]	2003	2004[73]	2005[74]	2006[75]	2007[76]
Austria	30.1		33.0			45.4 & 30.1	42.9 & 32.0	44.1 & 33.4
Belgium	40.4		40.9			41.2 & 43.3	41.6 & 40.4	42.9 & 41.4
Bulgaria	1.5		2.0		2.0	2.1 & 50	1.9 & 39.1	1.9 & 4.3
Cyprus			42.9		48.4	45.6 & 23.7	48.4 & 24.8	53.2 & 10.9
Czech Republic	11.7		10.3			8.7 & 43.6	7.3 & 37.0	7.4 & 38.9

71 http://www.coe.int/t/e/legal_affairs/legal_co-operation/prisons_and_alternatives/statistics_space_i/pc-cp%20_2001_%202%20-%20e%20_SPACE%20I%20-%202000%20final%20version_.pdf

72 http://www.coe.int/t/e/legal_affairs/legal_co-operation/prisons_and_alternatives/statistics_space_i/PC-CP(2003)5E-%20Space-I.pdf

73 http://www.coe.int/t/e/legal_affairs/legal_co-operation/prisons_and_alternatives/statistics_space_i/Council%20of%20Europe_SPACE%20I%20-%202004%20Nov05%20-%20E.pdf

74 http://www.coe.int/t/e/legal_affairs/legal_co-operation/prisons_and_alternatives/statistics_space_i/Council%20of%20Europe_SPACE%20I%20-%202005%20-%20final%20version.pdf

75 http://www.coe.int/t/e/legal_affairs/legal_co-operation/prisons_and_alternatives/statistics_space_i/pc-cp%20(2007)%2009%20rev3%20-%20e%20(SPACE%202006)%2023-01-08.pdf

76 http://www.coe.int/t/e/legal_affairs/legal_co-operation/prisons_and_alternatives/statistics_space_i/PC-CP_2009_%2001Rapport%20SPACE%20I_2007_090324_final.pdf

COUNTRIES	**2000**[71]	**2001**	**2002**[72]	**2003**	**2004**[73]	**2005**[74]	**2006**[75]	**2007**[76]
Denmark	17.0		16.3		16.5	18.2 & 48.1	18.9 & 49.2	18.0 & …
Estonia	3.1		35.8		31.9	40.4 & 26.2	40.4 & 27.8	40.9 & 29.9
Finland	6.2		8.5		7.7	7.5 & 39.9	8.1 & 32.7	8.3 & 28.6
France	21.6		21.5		21.9	20.5 & …	19.8 & …	19.4 & …
Germany			29.9		28.2	28.0 & 21.5	26.9 & 30.5	26.3 & 27.2
Greece	48.4		45.9			41.6 & …	58.4 & 24.0	
Hungary	4.8		4.6		3.9	3.8 & …	3.7 & 18.7	3.7 & …
Ireland	…		8.0				12.6 & 34.2	14.3 & 45.1
Italy	28.5		30.1		31.5	33.0 & 49.1	32.3 & 73.4	36.5 & 72.5
Latvia	0.4		0.5		0.5	0.4 & …	0.9 & 44.1	1.3 & …
Lithuania	1.4		1.2		0.7	0.8 & 20.9	1.0 & 41.0	1.0 & 32.5
Luxembourg	59.1		63.9		74.6	71.4 & 55.2	75.2 & 51.1	73.4 & 46.7
Malta			35.0			30.5	39.7	

COUNTRIES	**2000**[71]	**2001**	**2002**[72]	**2003**	**2004**[73]	**2005**[74]	**2006**[75]	**2007**[76]
						& 38.5	& 52.9	
Netherlands	7.4		29.1		27.2	32.9 & 28.6	32.7 & 24.5	29.1 & 31.0
Poland	2.2		1.6		1.3	.09 & 54.4	0.7 & 55.1	0.7 & 51.5
Portugal			12.0			18.5 & 42.1	20.2 & 42.0	20.5 & 37.0
Romania	0.6		0.7		0.8	0.7 & 16.8	0.7 & 11.9	0.8 & 9.5
Slovakia	2.6		2.3		2.2	2.4 & 66.8	2.1 & 51.9	2.0 & 61.8
Slovenia	16.6		15.3		13.2	12.7 & 47.9	11.6 & 45.7	10.5 & 48.6
Spain	18.8		25.4		27.5	30.1 & 39.5	31.2 & 38.9	32.4 & 38.7
Sweden	21.3		21.4		19.9	20.9 & …	21.4 & …	21.0 & …
UK (England & Wales	8.5				12.0	12.7 & 23.5	14.0 & 14.1	14.2 & 14.2
UK (Scotland)	1.9		1.2		1.3	1.0 & 21.1	1.8 & 48.1	2.8 & 45.1
UK (Northern Ireland)	…		1.5		0.8	2.8 & 39.5	3.9 & 77.6	

Note: (…) = data not available

Table 5: Estimated number of criminal proceedings involving non-nationals per year in Member States

COUNTRIES	Population of each Member State 2007[77]	% of Non-nationals in each MS 2007[78]	Number of criminal proceedings in 2007 *[79]	Number of criminal proceedings involving a non-national [80]
Austria	8,298,923	10%	165978	16598
Belgium	10,584,534	8.8%	211690	18628
Bulgaria	7,679,290	0.3%	37,977[81]	114
Cyprus	778,684	15.2%	107,997 (2006 statistics)[82]	10799
Czech Republic	10,287,189	2.9%	78,545[83]	2278
Denmark	5,447,084	5.1%	108941	5556
Estonia	1,342,409	17.6%	26848	4725
Finland	5,276,955	2.3%	105538	2427
France	63,392,140	5.8%	1267842	73534
Germany	82,314,906	8.8%	5,806,781 (2006 figures)[84]	255498
Greece	11,171,740	7.9%	223434	17651
Hungary	10,066,158	1.7%	426,914[85]	7257

[77] http://epp.eurostat.ec.europa.eu/tgm/refreshTableAction.do?tab=table&plugin=1&pcode=tps00001&language=en

[78] http://epp.eurostat.ec.europa.eu/portal/page?_pageid=1996,45323734&_dad=portal&_schema=PORTAL&screen=welcomeref&open=/t_popula/t_pop/t_demo_pop&language=en&product=REF_TB_population&root=REF_TB_population&scrollto=0

[79] Figures with no footnotes were derived by finding two percent of the population as on average this was the amount of proceedings for the countries that we have figures for

[80] We multiplied the % of non-nationals in each country by the no of criminal proceedings in each country.

[81] http://www.nsi.bg/SocialActivities_e/Crime_e.htm

[82] http://www.mof.gov.cy/mof/cystat/statistics.nsf/All/50F489DBBAA9E96DC22575080024ACA9?OpenDocument&sub=3&e=

[83] http://www.czso.cz/csu/cizinci.nsf/engt/1D003D9229/$File/c08t01.pdf

[84] Addition of figures for criminal proceedings at first instance, public prosecution and appellant instance stage. http://www.destatis.de/jetspeed/portal/cms/Sites/destatis/Internet/EN/Content/Statistics/Rechtspflege/Gerichtsverfahren/Tabellen/Content75/Gerichtsverfahren,templateId=renderPrint.psml

COUNTRIES	Population of each Member State 2007[77]	% of Non-nationals in each MS 2007[78]	Number of criminal proceedings in 2007 *[79]	Number of criminal proceedings involving a non-national [80]
Ireland	4,312,526	10.5%	86250	8625
Italy	59,131,287	5.0%	1182624	59131
Latvia	2,281,305	19.0%	45626	8668
Lithuania	3,384,879	1.2%	67696	812
Luxembourg	476,187	41.6%	9523	3961
Malta	407,810	3.4%	8156	277
Netherlands	16,357,992	4.2%	1,276,000[86]	53592
Poland	38,125,479	0.1%	2,669,300[87]	2669
Portugal	10,599,095	4.1%	211980	8691
Romania	21,565,119	0.1%	431302	431
Slovakia	5,393,637	0.6%	107872	647
Slovenia	2,010,377	2.7%	40206	1085
Spain	44,474,631	10.4%	936,789[88]	97426
Sweden	9,113,257	5.4%	182264	9842
United Kingdom	60,816,701	6.0%	148,800 (Scotland)[89] 1,732,506 (England and Wales)[90]	112878
Total				1,039,298

[85] http://portal.ksh.hu/pls/ksh/docs/eng/xstadat/xstadat_annual/tabl2_08_02ie.html
[86] http://statline.cbs.nl/StatWeb/publication/?VW=T&DM=SLEN&PA=37340eng&D1=0-4,10-20&HD=090429-1117&LA=EN&HDR=T&STB=G1
[87] http://statline.cbs.nl/StatWeb/publication/?VW=T&DM=SLEN&PA=37340eng&D1=0-4,10-20&HD=090429-1117&LA=EN&HDR=T&STB=G1
[88] http://www.ine.es/jaxi/tabla.do
[89] http://openscotland.gov.uk/Publications/2009/04/27103325/5
[90] http://www.justice.gov.uk/publications/criminalannual.htm

Table 6: Estimated costs of interpretation and translation in Member States

COUNTRIES	Population of each Member State 2007[91]	Number of criminal proceedings involving a non-national	Costs of Interpretation (no of non-nationals proceedings X €200)	Costs of Translation of 30 pages (no of non-nationals proceedings X €255-€1500)
Austria	8,298,923	16598	€3,319,600	€4,232,490-€24,897,000
Belgium	10,584,534	18628	€3,725,600	€4,750,140-€27,942,000
Bulgaria	7,679,290	114	€22,800	€29,070-€171,000
Cyprus	778,684	10799	€2,159,800	€2,753,745-€16,198,500
Czech Republic	10,287,189	2278	€455,600	€580,890-€3,417,000
Denmark	5,447,084	5556	€1,111,200	€1,416,780-€8,334,000
Estonia	1,342,409	4725	€945,000	€1,204,875-€7,087,500
Finland	5,276,955	2427	€485,400	€618,885-€3,640,500
France	63,392,140	73534	€14,706,800	€1,8751,170-€11,0301,000
Germany	82,314,906	255498	€51,099,600	€130,303,980-€766,494,000
Greece	11,171,740	17651	€3,530,200	€4,501,005-€26,476,500
Hungary	10,066,158	7257	€1,451,400	€1,850,535-€10,885,500
Ireland	4,312,526	8625	€1,725,000	€2,199,375-€12,937,500

[91] http://epp.eurostat.ec.europa.eu/tgm/refreshTableAction.do?tab=table&plugin=1&pcode=tps00001&language=en

COUNTRIES	**Population of each Member State 2007**[91]	**Number of criminal proceedings involving a non-national**	**Costs of Interpretation (no of non-nationals proceedings X €200)**	**Costs of Translation of 30 pages (no of non-nationals proceedings X €255-€1500)**
Italy	59,131,287	59131	€11,826,200	€15,078,045-€88,696,500
Latvia	2,281,305	8668	€1,733,600	€2,210,340-€13,002,000
Lithuania	3,384,879	812	€162,400	€207,060-€1,218,000
Luxembourg	476,187	3961	€792,200	€1,010,055-€5,941,500
Malta	407,810	277	€55,400	€70,635-€415,500
Netherlands	16,357,992	53592	€10,718,400	€13,665,980-€80,388,000
Poland	38,125,479	2669	€533,800	€680,595-€4,003,500
Portugal	10,599,095	8691	€1,738,200	€2,216,205-€13,036,500
Romania	21,565,119	431	€86,200	€109,905-€646,500
Slovakia	5,393,637	647	€129,400	€164,985-€970,500
Slovenia	2,010,377	1085	€217,000	€276,675-€1,627,500
Spain	44,474,631	97426	€19,485,200	€24,843,630-€146139000
Sweden	9,113,257	9842	€1,968,400	€2,509,710-€14,763,000
United Kingdom	60,816,701	112878	£37,500,000	€28,783,890-€169,317,000 £24,896,602-

COUNTRIES	**Population of each Member State 2007**[91]	**Number of criminal proceedings involving a non-national**	**Costs of Interpretation (no of non-nationals proceedings X €200)**	**Costs of Translation of 30 pages (no of non-nationals proceedings X €255-€1500)**
				£146,450,604

Notes to Table 6

Many Member States already comply with the ECHR obligation to provide interpretation and translation to suspects. This obligation is by no means new, nor are the costs related to it. All Member States have some system in place to cover interpretation and translation fees in their criminal justice systems. Those member States that comply well with the ECHR obligation are unlikely to have to incur any expenses in addition to what they already spend on this as a result of the proposed Framework Decision (e.g. UK and IE). The proposed instrument may result in costs for Member States that do not fulfil the requirements of the ECHR (and are consequently in breach of it).

In order to arrive at some costs, we took the figures provided by the UK for costs of interpretation and number of cases. By dividing the total cost by the number of cases, we were able to get an **average figure** per case, which we then adjusted for other Member States. We used a statistical breakdown of the ECtHR case law in order to get a rough estimate of the percentage of criminal cases that involve a foreign defendant.

So what we have been able to produce is the following

- a rough estimate of the number of criminal cases per Member State per year,
- an estimate of number involving a foreign defendant. We estimate this to be about 10% of criminal cases on average.
- an estimate of the possible range of costs of interpretation per Member State (by taking the estimate of number of cases involving a foreign defendant and multiplying this by our estimated average cost of interpretation for each case (approximately an average of €200 per case).

What we are not able to do is to refine this for each Member State given that we do not have the data on the actual number of cases where interpretation/translation is required. However, where we have been able to find information (for example by using the Google search engine to find press articles), the figures obtained tend to be comparable to our own.

Interpretation

UK spends £37.5 million on interpretation.

In Annex 5 it is shown that there 1,881,306 criminal proceedings in the UK in 2007. On average in the EU 10% of criminal proceedings involve non-nationals. Therefore 10% of 1,881,306 is 188,131.

To see on average how much is spent on interpretation we divided £37.5million by 188,131

Just under £200 was spent on average on interpretation in each case in the UK in 2007 which would convert to €200

Calculations

1,881,306		criminal proceedings
1,881,306		
/	100	
18813.06		
X	10	
188131		10% of cases
37,500,000		
/	112,878	
£ 199		average spent per case
€200		average spent per case

Translation

From Annex 3 we can see the varied amounts of costs for translation in each MS. This depends on whether calculating it by word/character/page etc.

We are going to base our translation costs on the amount it costs to translate a page.

The amount of pages that would need to be translated can vary from a simple case and two pages to translate to a very detailed document which may need up to 80 pages translated. Therefore we will use an average of a 30 page document that needs to be translated and see the cost of it.

From the figures given in Annex 3 the price of translating a page varies from €8.50 to €50.

Therefore if we multiply €8.50 by 30 pages we get a total cost of €255.

And if we multiply €50 by 30 pages we get a total cost of €1500.

Therefore the cost of translating 30 pages varies from €255 - € 1500 depending on the MS.

Calculations

30	
X	
8.50	
€255	per 30 pages @ €8.50 per page
30	
X	
50	
€1500	per 30 pages @ €50 per page

Total

Based on the UK cost of interpretation in 2007 and the costs we have for translation of a page in various Member States we have calculated an average cost of interpretation and translation. Thus if we were to add the cost of interpretation (€380) to the cost of translation (€255 - €1500) we get a total figure of €635- €1880 depending on the MS. The cost of translation could be also calculated by the amount per word/per character or per day.

RAT DER EUROPÄISCHEN UNION

Brüssel, den 15. Juli 2009
(OR. en)

11917/09
ADD 2

Interinstitutionelles Dossier: 2009/0101 (CNS)

DROIPEN 60
COPEN 133

ÜBERMITTLUNGSVERMERK

Absender:	Herr Jordi AYET PUIGARNAU, Direktor, im Auftrag des Generalsekretärs der Europäischen Kommission
Eingangsdatum:	9. Juli 2009
Empfänger:	der Generalsekretär/Hohe Vertreter, Herr Javier SOLANA
Betr.:	Arbeitsdokument der Kommissionsdienststellen Begleitdokument zu dem Vorschlag für einen Rahmenbeschluss des Rates über das Recht auf Verdolmetschung und Übersetzung in Strafverfahren – Zusammenfassung der Folgenabschätzung

Die Delegationen erhalten in der Anlage das Kommissionsdokument - SEK(2009) 916.

Anl.: SEK(2009) 916

KOMMISSION DER EUROPÄISCHEN GEMEINSCHAFTEN

Brüssel, den 8.7.2009
SEK(2009) 916

ARBEITSDOKUMENT DER KOMMISSIONSDIENSTSTELLEN

Begleitdokument zu dem

Vorschlag für einen

RAHMENBESCHLUSS DES RATES

über das Recht auf Beiziehung eines Dolmetschers und Übersetzers in Strafverfahren

ZUSAMMENFASSUNG DER FOLGENABSCHÄTZUNG

{KOM(2009) 338 endgültig}
{SEK(2009) 915}

ARBEITSDOKUMENT DER KOMMISSIONSDIENSTSTELLEN

ZUSAMMENFASSUNG

1. HINTERGRUND

Das Recht von Angeklagten und Verdächtigen auf einen fairen Prozess ist ein Grundrecht und als solches ein allgemeiner Grundsatz, den die Europäische Union gemäß Artikel 6 Absatz 2 EU-Vertrag achtet. Juristen und Mitgliedstaaten sind sich darin einig, dass die Strafjustiz der Mitgliedstaaten, um gegenseitiges Vertrauen zu schaffen, verdächtigen und angeklagten Personen gleich welcher Staatsangehörigkeit ein Mindestmaß an Verfahrensgarantien bieten muss. Maßnahmen in diesem Bereich gehörten zu den Prioritäten des Haager Programms. Das Legislativprogramm der Kommission für 2009 enthält einen neuen diesbezüglichen Vorschlag. Die Folgenabschätzung bewertet diesen Vorschlag und die Alternativen dazu.

2. POLITISCHES MANDAT, RECHTSGRUNDLAGE UND ANHÖRUNG INTERESSIETER KREISE

Die Verteidigungsrechte sind in den Schlussfolgerungen von Tampere ausdrücklich erwähnt und waren stets fester Bestandteil der EU-Agenda auf dem Gebiet der gegenseitigen Anerkennung. Es wurde bereits eine ganze Reihe von Rechtsinstrumenten angenommen, um die Ermittlungen und die Strafverfolgung in grenzüberschreitenden Strafsachen zu erleichtern und zu beschleunigen. Bisher gibt es allerdings noch kein Instrument, das die rechtliche Stellung von Personen in Verfahren mit grenzüberschreitendem Bezug stärkt. Dieses unausgewogene Kräfteverhältnis hat negative Auswirkungen auf das Vertrauen der Mitgliedstaaten untereinander, weshalb die EU tätig werden sollte.

Im Anschluss an das Grünbuch über Verfahrensgarantien aus dem Jahr 2003 nahm die Kommission im April 2004 einen Vorschlag für einen diesbezüglichen Rahmenbeschluss an. Da keine Einigung über den Beschluss erzielt werden konnte, wurde er schließlich fallen gelassen. Der Vorschlag stützte sich auf Artikel 31 Absatz 1 Buchstabe c EU-Vertrag. Der Juristische Dienst des Rates gab eine Stellungnahme ab, in der bestätigte wurde, dass die gewählte Rechtsgrundlage die richtige sei.

Am 26./27. März 2009 war die Kommission Gastgeberin einer Fachtagung zu diesem Thema. Die Mehrheit der Teilnehmer sprach sich dabei für eine Rechtsetzungsinitiative aus, die von nichtlegislativen Maßnahmen flankiert wird. Eine überwältigende Mehrheit war gegen eine Beschränkung des Vorschlags auf grenzüberschreitende Fälle. Die Folgenabschätzung wurde auf zwei Treffen der dienststellenübergreifenden Lenkungsgruppe erörtert. Die Kommission hat für ihre Erstellung eine Reihe zusätzlicher Quellen, darunter fünf Studien, herangezogen.

3. PROBLEMSTELLUNG

Das Problem lässt sich unter verschiedenen rechtlichen und sozialen Aspekten betrachten, die wie folgt resümiert werden können:

– verstärkte Mobilität innerhalb der EU, veraltete Vorschriften und inkohärente Anwendung bestehender internationaler Normen (EMRK) auf Ebene der Mitgliedstaaten;

– Festnahmen mit anschließender Überstellung aufgrund des Europäischen Haftbefehls fallen nach allgemeiner Rechtsauffassung nicht in den Anwendungsbereich von Artikel 6 der EMRK, weil dies als Auslieferung gilt;

– gegenseitige Anerkennung kann nur dann richtig funktionieren, wenn die Mitgliedstaaten sich sicher sein können, dass von den Gerichten anderer Mitgliedstaaten gefällte Entscheidungen unter fairen Bedingungen zustande gekommen sind;

– unter Bürgern und Juristen besteht die Vorstellung, sie würden von der Justiz anderer Mitgliedstaaten ungerecht behandelt und hätten keine Chance, auf überstaatlicher Ebene dagegen vorzugehen, weil der Europäische Gerichtshof für Menschenrechte (EGMR) unter einer Flut von Beschwerden leide;

– ein Aspekt des Problems ist, dass die einer Straftat angeklagte Person keine Gewähr hat, angemessene Übersetzungs- und Dolmetschdienste zu erhalten.

4. HANDLUNGSBEDARF SEITENS DER EU

Eine ULB-Studie kam zu dem Ergebnis, dass die Maßnahmen auf dem Gebiet der gegenseitigen Anerkennung deshalb weniger greifen würden, weil es an gegenseitigem Vertrauen fehle. Ohne angemessene Standards zum Schutz des Rechts von verdächtigen Personen auf Verfolgung des Prozessgeschehens besteht die Gefahr, dass das bereits erwähnte unausgewogene Kräfteverhältnis zwischen den Strafverfolgungsbehörden und dem Beschuldigten noch weiter zunehmen und damit letztlich den Interessen der Justiz in der EU schaden könnte.

Bisher sind die Mitgliedstaaten ihrer Pflicht zur Gewährleistung eines fairen Verfahrens, die sich vor allem aus ihrem innerstaatlichen Recht und der EMRK ergibt, in unterschiedlichem Maße nachgekommen, was zu unterschiedlichen Schutzniveaus in den einzelnen Mitgliedstaaten geführt hat. Die EU könnte im Wege der Rechtsetzung klären, worin die Verpflichtung zur Gewährleistung des Rechts auf ein faires Verfahren im Rahmen der Strafjustiz in der EU besteht.

5. ZIELE

Das übergeordnete Ziel besteht darin, das gegenseitige Vertrauen zu stärken, damit der Grundsatz der gegenseitigen Anerkennung besser zum Tragen kommt. Je mehr das gegenseitige Vertrauen wächst, desto besser dürften die EU-Rechtsinstrumente auf dem Gebiet der gegenseitigen Anerkennung greifen.

Aus diesem übergeordneten Ziel lassen sich die beiden folgenden besonderen Zielsetzungen herleiten:

1) Festlegung gemeinsamer verfahrensrechtlicher Mindeststandards bei allen Arten von Verfahren einschließlich Auslieferungsverfahren und Verfahren im Zuge eines Europäischen Haftbefehls,

2) Unterrichtung der Bürger darüber, wie sie überall in der EU von diesen gemeinsamen Mindeststandards profitieren können.

6. OPTIONEN

1: Beibehaltung des Status quo

Bleibt die EU untätig, könnte sich die Situation in der unter Abschnitt 4 beschriebenen Weise entwickeln. Die Entscheidung für diese Option setzt voraus, dass sich die Mitgliedstaaten an die EMRK halten und dass sie Mindestgarantien in ihre innerstaatlichen Verfahren eingebaut haben.

2: Nichtlegislative Maßnahmen (bewährte Verfahrensweisen)

Bei dieser Option würden Praktiken, die sich auf nationaler Ebene bewährt haben, ausgetauscht und hiervon ausgehend EU-Leitlinien erarbeitet. Durch die Verbreitung und Weiterempfehlung dieser Verfahren würden die Normen der Europäischen Menschenrechtskonvention stärker ins allgemeine Bewusstsein dringen und würde sich mithin auch ihre Einhaltung verbessern. Eine weitere Annäherung der Rechtsnormen würde auf diese Weise allerdings nicht erreicht.

3: Neues Rechtsinstrument, mit dem alle Verfahrensgarantien erfasst werden

Diese Option wäre nur möglich mit einem neuen Vertrag, der eine ausdrückliche Rechtsgrundlage hierfür liefert und ein anderes (nämlich das herkömmliche) EG-Rechtsetzungsverfahren hierfür vorsieht. Nach erfolgter Annahme dieses Rechtsinstruments würden dessen Umsetzung durch die Mitgliedstaaten und Überwachung durch die Kommission sowie die Möglichkeit, sich vor dem Europäischen Gerichtshof auf das Instrument zu berufen, Unterschiede in der Anwendung der EMRK beseitigen helfen. Um das gegenseitige Vertrauen in der Praxis zu stärken, wären unter Umständen praxisorientierte Maßnahmen vonnöten.

4: Eine auf grenzüberschreitende Strafsachen beschränkte Maßnahme

Diese Option wäre zwar nur ein erster Schritt, der aber, wenn er Erfolg hätte, zur Stärkung des gegenseitigen Vertrauens beitragen und die Widerstände gegen weitere Rechtsetzungsmaßnahmen überwinden helfen würde. Er müsste jedoch sorgsam durchdacht werden, um auf das Problem einer etwaigen Ungleichbehandlung von Tatverdächtigen in grenzüberschreitenden Verfahren im Verhältnis zu Tatverdächtigen in rein innerstaatlichen Verfahren eine angemessene Antwort zu finden.

5: Schrittweises Vorgehen beginnend mit dem Recht auf Verdolmetschung und Übersetzung

Hierzu bedürfte es eines neuen Rahmenbeschlusses, in dem die Mitgliedstaaten lediglich zur Einhaltung der Mindestnormen beim Zugang zu Dolmetsch- und Übersetzungsdiensten verpflichtet werden. Dieses Recht sollte für jede Person ab dem Zeitpunkt gelten, zu dem ihr von den zuständigen Behörden eines Mitgliedstaats mitgeteilt wird, dass sie der Begehung einer Straftat verdächtigt oder beschuldigt wird, bis zum Abschluss des Verfahrens. Diese Option kann unterschiedlich weit gefasst sein und entweder a) nur auf grenzüberschreitende Fälle Anwendung finden oder b) generell anwendbar sein.

7. ANALYSE DER AUSWIRKUNGEN DER EINZELNEN OPTIONEN

1 Beibehaltung des Status quo

Bliebe die EU untätig, könnte dies letztlich zu einer Verlangsamung der im Bereich der justiziellen Zusammenarbeit in Strafsachen erzielten Forschritte und mithin der Schaffung eines gemeinsamen Raums des Freiheit, der Sicherheit und des Rechts führen.

2 Bewährte Verfahren

Positiver Effekt: Best-practice-Empfehlungen könnten zu einigen Verbesserungen führen, vorausgesetzt, sie werden von den Mitgliedstaaten befolgt. Negativer Effekt: Vieles davon findet sich bereits in Empfehlungen des Europarates und in Ratschlägen von Rechtsexperten wieder, die jedoch keinen Widerhall gefunden haben. Die Wahl dieser Option könnte für das

Europaparlament, Betroffene und einige Mitgliedstaaten, die sich ein verbindliches Rechtsinstrument wünschen, enttäuschend sein.

3 Neues Rechtsinstrument, mit dem alle Verfahrensgarantien erfasst werden

Positiver Effekt: Ein Rahmenbeschluss dieser Art würde die Rechtssicherheit unter den Mitgliedstaaten erhöhen, da er rechtliche Bindewirkung hätte und mithin die Einhaltung der EMRK-Normen zum Recht auf ein faires Verfahren verbessern würde. Allerdings bedeutet das Zusammenschnüren der Rechte zu einem Paket auch, dass für jedes Recht weniger Raum zur Verfügung steht; dies erfordert Kompromisse, die wiederum zu einer Verwässerung der Rechte führen. Bei Inkrafttreten des Vertrags von Lissabon ist keine Einstimmigkeit mehr erforderlich.

4 Alleinige Regelung von grenzüberschreitenden Strafsachen

Es gibt keine allgemeingültige Definition dessen, was unter einer „grenzüberschreitenden Strafsache“ zu verstehen ist. Die Mitgliedstaaten zeigen wenig Neigung, den Begriff der grenzüberschreitenden Strafsache zu definieren oder Rechtsvorschriften anzunehmen, die eine solche Definition erfordern.

Bei dieser Option würden zum einen Kosten entstehen, weil entsprechende Vorkehrungen getroffen werden müssten, damit die Rechte wahrgenommen werden können, zum anderen aber auch Kosten eingespart, weil nicht so oft Rechtsmittel eingelegt würden. Die mögliche Gefahr dieser Lösung bestünde in einer Abnahme des gegenseitigen Vertrauens, da der Eindruck entstehen könnte, dass die Justiz gespalten ist – in ein System für innerstaatliche Strafsachen und ein System für grenzüberschreitende Strafsachen. Positiver Effekt: Diese Option würde den Mitgliedstaaten entgegenkommen, die eine auf grenzüberschreitende Fälle beschränkte Maßnahme gefordert hatten. Negativer Effekt: Eine Maßnahme mit einem eingeschränkten Geltungsbereich könnte Verwirrung stiften, da dieselbe Sache von dem einen Mitgliedstaat als grenzüberschreitende und von einem anderen Mitgliedstaat als innerstaatliche Sache eingestuft werden könnte. In der Praxis könnte die Einstufung der Fälle Probleme bereiten, so dass Fehlentscheidungen oder Streitigkeiten nicht ausbleiben würden.

5 Schrittweises Vorgehen

In finanzieller Hinsicht hätte diese Lösung dieselben zweifachen Auswirkungen wie die vorstehende Option. Positiver Effekt: Eine derartige Maßnahme würde die Qualität und Verfügbarkeit der Dolmetsch- und Übersetzungsdienste verbessern. Das gegenseitige Vertrauen würde gestärkt. Sie würde ein faires Verfahren in den Fällen garantieren, in denen die Verdachtsperson dem Strafverfahren nicht folgen kann oder ihre Rechte oder die gegen sie erhobenen Beschuldigungen nicht versteht. Negativer Effekt: Für die Mitgliedstaaten, die bisher keine Gerichtsdolmetscher oder -übersetzer ausbilden, würde sich der Kosten- und Verwaltungsaufwand erhöhen. Die Einhaltung der Vorschriften müsste überprüft werden, was ebenfalls aufwändig wäre.

Die Teilnehmer der Fachtagung vom März 2009, zu denen auch Regierungsvertreter gehörten, sprachen sich vehement für den Vorschlag aus, zunächst allein dieses Recht zu regeln. Im März 2009 veröffentlichte die GD Dolmetschen einen Bericht, nämlich den Abschlussbericht des „Reflection Forum on Multilingualism and Interpreter Training“, dessen Empfehlungen in ein künftiges Arbeitspapier mit „Best-practice-Empfehlungen“ einmünden könnte.

8. VERGLEICH DER OPTIONEN

+++ starker positiver Effekt

0 kein Effekt

--- starker negativer Effekt

Option	Nutzen im Verhältnis zu den Zielen und Kohärenz mit sonstigen EU-Politiken		Auswirkungen auf die Gesellschaft und die Grundrechte	Kosteneffizienz	Politische Durchführbarkeit
	Festlegung verfahrensrechtlicher Mindestnormen in Strafverfahren	Unterrichtung der Bürger über ihre Rechte			
1. Status quo - kein weiteres Tätigwerden der EU	0 Keines der Ziele würde ohne ein Tätigwerden der EU erreicht		0 Missverhältnis zwischen Rechten und justizieller Zusammenarbeit kann die Justiz und das gegenseitige Vertrauen in der EU beschädigen.	0 kostenneutral	Das EP und die meisten Mitgliedstaaten erwarten, dass die EU tätig wird.
2. Unverbindliche/nichtlegislative Maßnahme – Verbreitung bewährter Verfahrensweisen	+ Hängt von der Bereitschaft der MS zur Anwendung der Verfahren ab. Führt zu keiner Harmonisierung.	++ Eine gut organisierte europaweite Informationskampagne kann das Wissen über die EMRK-Rechte und das, was jemand tun kann, der sich allein gelassen fühlt, verbessern.	+ Wenn sich die MS durchweg an die Leitlinien halten, blieben die Rechte der beschuldigten Person gewahrt.	- Kommt auf die Art der Umsetzung an. Die meisten Kosten entfielen auf Ausbildungsmaßnahmen, die von den Studierenden getragen werden könnten. Größere MS (Quelle: UK) planen Zuschüsse in Höhe von 5000 € pro Hochschule.	Alle MS halten einige nichtlegislative Maßnahmen für nötig. Die Erfahrung zeigt jedoch, dass unverbindliche Leitlinien nicht konsequent befolgt werden.

Option	Nutzen im Verhältnis zu den Zielen und Kohärenz mit sonstigen EU-Politiken		Auswirkungen auf die Gesellschaft und die Grundrechte	Kosteneffizienz	Politische Durchführbarkeit
	Festlegung verfahrensrechtlicher Mindestnormen in Strafverfahren	**Unterrichtung der Bürger über ihre Rechte**			
3. Wiedervorlage des Rechtsinstruments zu allen Verfahrensgarantien	+++ Festlegung der Mindestnormen auf allen einschlägigen Gebieten.+	+ Ein allumfassendes Instrument ohne flankierende Maßnahmen würde an sich den Informationsgrad der Öffentlichkeit nicht verbessern, aber das Interesse der Medien auf sich ziehen, die sich eher mit den kontroversen Aspekten befassen würden.	+++ Alle beschuldigten Personen hätten die Gewähr, dass die ihnen aus der EMRK erwachsenden Rechte gewahrt werden. Würde eine Vertrauensbasis in der gesamten EU schaffen. Allgemeingültige Standards im Justizwesen könnten mehr Bürger dazu bewegen, von ihrem Recht auf Freizügigkeit Gebrauch zu machen.	--- Relativ kostenintensiv, besonders in den Mitgliedstaaten, in denen es bisher noch keinen unentgeltlichen Rechtsbeistand gab.	Würde von den sechs MS, die sich bereits 2006 gegen den Vorschlag ausgesprochen hatten, erneut verworfen. Mit dem Lissabon-Vertrag könnte der Vorschlag von 2004 mit qualifizierter Mehrheit und der Möglichkeit von Opt-outs den Rat passieren.
4. Rechtsinstrument zu allen Verfahrensgarantien, aber auf grenzüberschreitende Fälle beschränkt	++ Würde bis zu einem gewissen Grad gemeinsame Standards liefern, aber nicht für jeden, der einer Straftat beschuldigt wird.	- Ohne flankierende Maßnahmen wäre auch hier die Öffentlichkeit nicht besser informiert. Würde Interesse der Medien wecken, die die Gewährleistung von Rechten nur zugunsten von in grenzüberschreitende	- Allen beschuldigten Personen würden überall die gleichen Rechte zustehen, gleich, wo in der EU sie festgenommen werden. Risiko der Aufspaltung der Tatverdächtigen in zwei Gruppen - solche, die in	-- Hängt von der Zahl der Fälle ab, die als „grenzüberschreitend" eingestuft werden, und wird von MS zu MS variieren (bisher liegen noch keine Statistiken vor). Vermutlich werden die Kosten jedoch relativ hoch sein.	Die Definition dessen, was unter „grenzüberschreitend" zu verstehen ist, dürfte kontrovers diskutiert werden, vor allem wegen der aus grundrechtlicher Sicht bedenklichen positiven Diskriminierung. Voraussichtlich genauso

Option	Nutzen im Verhältnis zu den Zielen und Kohärenz mit sonstigen EU-Politiken		Auswirkungen auf die Gesellschaft und die Grundrechte	Kosteneffizienz	Politische Durchführbarkeit
	Festlegung verfahrensrechtlicher Mindestnormen in Strafverfahren	**Unterrichtung der Bürger über ihre Rechte**			
		Verfahren verwickelten Tatverdächtigen negativ aufnehmen würden; ihre Berichterstattung könnte irreführend sein.	grenzüberschreitende Strafsachen und solche, die in rein innerstaatliche Sachen verwickelt sind – mit dem Ergebnis einer Diskriminierung, die den Nutzen wieder aufwiegen kann.		unannehmbar wie Option 3.
5a. Rahmenschluss über das Recht auf Verdolmetschung und Übersetzung in grenzüberschreitenden Strafsachen	+ Gemeinsame Normen in dem Bereich, der als der dringlichste angesehen wird, aber nicht für jeden, der einer Straftat beschuldigt wird. Wäre ein Fortschritt und ein schrittweiser Ansatz	- Wie schon oben könnte eine schlechte Presse die Öffentlichkeit irreführen.	- Allen beschuldigten Personen würden überall die gleichen Rechte in Bezug auf Verdolmetschung und Übersetzung zustehen, gleich, wo in der EU sie festgenommen werden. Risiko der Aufspaltung der Tatverdächtigen in zwei Gruppen - solche, die in grenzüberschreitende Strafsachen und solche, die in rein innerstaatliche Sachen verwickelt sind – mit dem Ergebnis einer Diskriminierung, die den Nutzen wieder aufwiegen	- Hängt von der Zahl der Fälle ab, die als „grenzüberschreitend" eingestuft werden, und wird von MS zu MS variieren (bisher liegen noch keine Statistiken vor).	Würde wahrscheinlich die Unterstützung der meisten oder aller MS erhalten, wenn eine Einigung in der Definition des Begriffs „grenzüberschreitend" zustande käme. Der Vorschlag würde den Verhältnismäßigkeitstest bestehen, da er nicht über das für die Erreichung der Ziele des Vertrags erforderliche Maß hinausgeht. Das Subsidiaritätsprinzip bliebe ebenfalls gewahrt, da er nicht in rein innerstaatliche Fälle eingreifen würde.

Option	Nutzen im Verhältnis zu den Zielen und Kohärenz mit sonstigen EU-Politiken		Auswirkungen auf die Gesellschaft und die Grundrechte	Kosteneffizienz	Politische Durchführbarkeit
	Festlegung verfahrensrechtlicher Mindestnormen in Strafverfahren	Unterrichtung der Bürger über ihre Rechte			
			kann.		
5b. Rahmenschluss über das generelle Recht auf Verdolmetschung und Übersetzung	++ Gemeinsame Normen nur in einem Bereich, der aber als der dringlichste angesehen wird.	0 Dürfte ohne flankierende Maßnahmen kaum ins Bewusstsein der Öffentlichkeit dringen.	+ Durch Verbriefung des Rechts auf Kenntnisnahme der Anschuldigungen und Verfolgung des Prozessgeschehens würde die Chancengleichheit beim Rechtsschutz erhöht.	-- Die Mittel, um eine adäquate Verdolmetschung zu gewährleisten, werden für die großen Mitgliedstaaten auf 40 Mio. € jährlich geschätzt. Die Übersetzungskosten variieren je nach der Preisstruktur in einem Mitgliedstaat.	Die meisten MS würden ein Tätigwerden der EU in diesem Bereich befürworten.

Zusammenfassung der Option eines ***schrittweisen*** Vorgehens

Relevanz gemessen an den Zielen	Auswirkungen auf die Gesellschaft und die Grundrechte	Kosten	Politische Machbarkeit und Haltung der politischen Entscheidungsträger
Ziele werden erreicht, wenn die MS flankierende Maßnahmen ergreifen.	Gemeinsame Standards nur in einem Bereich, der aber als der dringlichste angesehen wird. Wäre ein Fortschritt und ein schrittweiser Ansatz.	Hängt von der Zahl der Fälle ab, die als „grenzüberschreitend" eingestuft werden, und wird von MS zu MS variieren.	Die Mehrheit der Mitgliedstaaten erwartet eine Rechtsetzungsmaßnahme der EU zusammen mit flankierenden

		Die Mittel, um eine adäquate Verdolmetschung zu gewährleisten, werden für große Mitgliedstaaten (UK) auf 40 Mio. € jährlich geschätzt. Die Übersetzungskosten variieren je nach der Preisstruktur in einem Mitgliedstaat. Die Kosten für flankierende Maßnahmen hängen davon ab, welcher Art diese Maßnahmen sind. Die meisten Kosten entfallen auf Ausbildungsmaßnahmen und könnten von den Studierenden getragen werden. Die UK-Regierung plant Zuschüsse in Höhe von rund 5000 € pro Hochschule.	Maßnahmen.

9. DER ANSATZ EINES SCHRITTWEISEN VORGEHENS IM DETAIL

Diese Option würde ein allmähliches schrittweises Vorgehen ermöglichen und Spielraum lassen für einen langfristigen Aktionsplan zur allmählichen Angleichung der Rechtsvorschriften im Bereich der Verfahrensgarantien. Sie wäre außerdem weniger vom Lissabon-Vertrag abhängig als Option 3.

Sie würde die Qualität und Verfügbarkeit der Dolmetsch- und Übersetzungsdienste verbessern und dadurch gegenseitiges Vertrauen schaffen. Sie würde ein faires Verfahren in den Fällen garantieren, in denen die Verdachtsperson dem Prozessgeschehen nicht folgen kann oder ihre Rechte oder die gegen sie erhobenen Beschuldigungen nicht versteht. Für die Mitgliedstaaten, die bisher keine Gerichtsdolmetscher und -übersetzer ausbilden, würde sich der Kosten- und Verwaltungsaufwand erhöhen.

Die Wahrung des Rechts auf Verdolmetschung und Übersetzung ist für die gegenseitige Anerkennung von zentraler Bedeutung, wenn auch nicht ausreichend. Es handelt sich insofern um ein wesentliches Recht, als es die Ausübung anderer Rechte wie das Recht auf einen Rechtsbeistand oder Belehrung über die eigenen Rechte ermöglicht. Dem Verfahren folgen zu können ist eine Voraussetzung zur Durchsetzung der übrigen Rechte, die ein faires Verfahren garantieren.

10. ÜBERWACHUNG UND BEWERTUNG

Jeder Kommissionsvorschlag würde eine Bestimmung enthalten, wonach die Mitgliedstaaten der Kommission innerhalb einer bestimmten Frist ihre Durchführungsbestimmungen sowie eine Korrelationstabelle zu übermitteln haben. Die Kommission würde anschließend einen Bericht erstellen, in dem festgestellt wird, welche Mitgliedstaaten ihren Verpflichtungen aus dem Rahmenbeschluss nachgekommen sind. Gradmesser für die Einhaltung könnte beispielsweise sein, ob entsprechende Ausbildungsgänge angeboten werden, ob es ein amtliches Verzeichnis gibt und wie viele zertifizierte Dolmetscher und Übersetzer zur Verfügung stehen. Mit Hilfe einer Eurobarometer-Umfrage ließe sich feststellen, inwieweit die Öffentlichkeit der Meinung ist, dass Strafverfahren in der EU fairer geworden sind.

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