

# Procedure file

Basic information	
COD - Ordinary legislative procedure (ex-codecision procedure) Directive	2010/0801(COD) Procedure completed
Judicial cooperation in criminal matters: right to interpretation and to translation in criminal proceedings. Initiative Belgium, Germany, Estonia, Spain, France, Italy, Luxembourg, Hungary, Austria, Portugal, Romania, Finland and Sweden	
Subject 7.40.04 Judicial cooperation in criminal matters	

Key players			
European Parliament	Committee responsible	Rapporteur	Appointed
	<b>LIBE</b> Civil Liberties, Justice and Home Affairs		26/01/2010
		ALDE <a href="#">LUDFORD Baroness Sarah</a>	
		Shadow rapporteur PPE <a href="#">ANTONESCU Elena Oana</a>	
	Committee for opinion	Rapporteur for opinion	Appointed
	<b>JURI</b> Legal Affairs	The committee decided not to give an opinion.	
Council of the European Union	Council configuration	Meeting	Date
	<a href="#">Justice and Home Affairs (JHA)</a>	<a href="#">3034</a>	07/10/2010
	<a href="#">Justice and Home Affairs (JHA)</a>	<a href="#">3018</a>	03/06/2010
	<a href="#">Justice and Home Affairs (JHA)</a>	<a href="#">2998</a>	25/02/2010
European Commission	Commission DG	Commissioner	
	<a href="#">Justice and Consumers</a>	REDING Viviane	

Key events			
22/01/2010	Legislative proposal published	<a href="#">00001/2010</a>	Summary
08/02/2010	Committee referral announced in Parliament, 1st reading		
25/02/2010	Debate in Council	<a href="#">2998</a>	
03/06/2010	Debate in Council	<a href="#">3018</a>	Summary
10/06/2010	Vote in committee, 1st reading		Summary
	Committee report tabled for plenary, 1st		

11/06/2010	reading	<a href="#">A7-0198/2010</a>	
14/06/2010	Debate in Parliament		
16/06/2010	Results of vote in Parliament		
16/06/2010	Decision by Parliament, 1st reading	<a href="#">T7-0220/2010</a>	Summary
07/10/2010	Act adopted by Council after Parliament's 1st reading		
20/10/2010	Final act signed		
20/10/2010	End of procedure in Parliament		
26/10/2010	Final act published in Official Journal		

### Technical information

Procedure reference	2010/0801(COD)
Procedure type	COD - Ordinary legislative procedure (ex-codecision procedure)
Procedure subtype	Legislation
Legislative instrument	Directive
Legal basis	Treaty on the Functioning of the EU TFEU 082-p2
Other legal basis	Rules of Procedure EP 159
Stage reached in procedure	Procedure completed
Committee dossier	LIBE/7/02165

### Documentation gateway

Legislative proposal	<a href="#">00001/2010</a>	22/01/2010	CSL	Summary
Supplementary legislative basic document	<a href="#">05673/2010</a>	22/01/2010	CSL	Summary
Supplementary legislative basic document	<a href="#">05676/2010</a>	22/01/2010	CSL	
Document attached to the procedure	<a href="#">05674/2010</a>	22/01/2010	CSL	
Committee draft report	<a href="#">PE439.397</a>	05/03/2010	EP	
Amendments tabled in committee	<a href="#">PE440.000</a>	25/03/2010	EP	
Committee report tabled for plenary, 1st reading/single reading	<a href="#">A7-0198/2010</a>	11/06/2010	EP	
Text adopted by Parliament, 1st reading/single reading	<a href="#">T7-0220/2010</a>	16/06/2010	EP	Summary
Draft final act	<a href="#">00027/2010/LEX</a>	20/10/2010	CSL	
Follow-up document	<a href="#">COM(2018)0857</a>	18/12/2018	EC	Summary

### Additional information

National parliaments	<a href="#">IPEX</a>
European Commission	<a href="#">EUR-Lex</a>

### Final act

## Judicial cooperation in criminal matters: right to interpretation and to translation in criminal proceedings. Initiative Belgium, Germany, Estonia, Spain, France, Italy, Luxembourg, Hungary, Austria, Portugal, Romania, Finland and Sweden

**PURPOSE:** to lay down rules concerning the rights to interpretation and to translation in criminal proceedings and proceedings for the execution of a European Arrest Warrant.

**PROPOSED ACT:** Initiative of Belgium, Germany, Estonia, Spain, France, Italy, Luxembourg, Hungary, Austria, Portugal, Romania, Finland and Sweden for a Directive of the European Parliament and of the Council.

**BACKGROUND:** on 29 November 2000 the Council, in accordance with the Tampere Conclusions, adopted a programme of measures to implement the principle of mutual recognition of decisions in criminal matters. Mutual recognition can only operate effectively in a spirit of confidence, whereby not only judicial authorities, but all actors in the criminal process see decisions of the judicial authorities of other Member States as equivalent to their own, implying not only trust in the adequacy of one's partners' rules, but also trust that those rules are correctly applied.

Although all Member States are parties to the European Convention for the Protection of Human Rights and Fundamental Freedoms (ECHR), experience has shown that this in itself does not always provide a sufficient degree of trust in the criminal justice systems of other Member States. Common minimum rules should lead to increased confidence in the criminal justice systems of all Member States, which in turn should lead to more efficient judicial cooperation in a climate of mutual trust. Such common minimum rules should be applied in the fields of interpretation and translation in criminal proceedings.

**IMPACT ASSESSMENT:** in view of the step-by-step approach set out in the Roadmap, the Commission presented on 8 July 2009 a [proposal for a Council Framework Decision](#) on the right to interpretation and to translation in criminal proceedings. This proposal was accompanied by an Impact Assessment.

This impact assessment is re-submitted as "detailed statement" allowing to appraise compliance with the principles of subsidiarity and proportionality in accordance with the Lisbon Treaty, in view of the presentation by Member States of an initiative for a Directive of the European Parliament and of the Council on the rights to interpretation and to translation in criminal proceedings.

Five options are set out as follows:

- Option 1: status quo;
- Option 2: adoption of non-legislative measures (such as recommendations) to exchange best practices and to establish Community guidelines;
- Option 3: new instrument covering all rights;
- Option 4: legislative measures restricted to the cross-border cases;
- Option 5: step-by-step approach beginning with legislative measures on access to interpretation and translation services (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).

Option 5 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. This option would result in an improvement in the quality and provision of interpretation and translation in criminal proceedings. 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 option would place an additional financial and administrative burden on Member States that currently do not offer training to legal interpreters and translators.

**CONTENT:** the proposal lays down rules concerning the rights to interpretation and to translation in criminal proceedings and proceedings for the execution of a European Arrest Warrant (EAW). Those rights apply to any person from the time that person is made aware by the competent authorities of a Member State that he is suspected or accused of having committed a criminal offence until the conclusion of the proceedings, which is understood to mean the final determination of the question whether the suspected or accused person has committed the offence. The Directive will not apply to proceedings which may lead to sanctions being imposed by an authority other than a criminal court, as long as those proceedings are not pending before a court having jurisdiction in criminal matters.

**Right to interpretation:** a suspected or accused person who does not understand or speak the language of the criminal proceedings concerned must be provided with interpretation into his native language or into another language that he understands, in order to safeguard his right to fair proceedings. Interpretation, including of communications between the suspected or accused person and his legal counsel, shall be provided during criminal proceedings before investigative and judicial authorities, including during police questioning, during all court hearings and during any necessary interim hearings, and may be provided in other situations. This provision will not affect rules of national law concerning the presence of a legal counsel during any stage of the criminal proceedings. A person with a hearing impediment must receive interpretation assistance, if appropriate for that person.

Member States must ensure that it is verified in any appropriate manner, including by consulting the suspected or accused person, whether he understands and speaks the language of the criminal proceedings and needs the assistance of an interpreter. At some stage in the proceedings, in accordance with national law, there must be the possibility of a review of a finding that there is no need for interpretation. Such review does not entail the obligation for Member States to provide for a separate mechanism in which the sole ground for review is the challenging of such finding. In proceedings for the execution of a EAW, the executing Member State shall ensure that its competent authorities provide any person subject to such proceedings who does not understand or speak the language of the proceedings, with interpretation.

**Right to translation of essential documents:** a suspected or accused person who does not understand the language of the criminal

proceedings concerned must be provided with a translation, into his native language or into another language that he understands, of all documents which are essential in order to safeguard his right to fair proceedings, or at least the important passages of such documents, provided that the person concerned has the right of access to the documents concerned under national law. The competent authorities must decide which the essential documents to be translated are. The latter must include at least detention orders or equivalent decisions depriving the person of his liberty, the charge or indictment and any judgment, where such documents exist. The suspected person may submit a reasoned request for translation of further documents which are necessary for the effective exercise of the right of defence.

There must be the possibility of a review if translation of a document referred to above is not provided. Such review does not entail the obligation for Member States to provide for a separate mechanism in which the sole ground for review is the challenging of such finding.

In proceedings for the execution of an EAW, the executing Member State shall ensure that its competent authorities provide any person subject to such proceedings who does not understand the language in which the European Arrest Warrant is drawn up, or into which it has been translated by the issuing Member State, with a translation of that document. Provided that this does not affect the fairness of the proceedings, an oral translation or an oral summary of the documents may be provided instead of a written translation. A person who has a right to translation of documents may, at any time, waive this right.

Costs: Member States shall cover the costs of interpretation and translation resulting from the application of the above provisions, irrespective of the outcome of the proceedings.

Quality of the interpretation and translation: concrete measures must be taken to ensure that the interpretation and translation provided shall be of adequate quality so that the suspected or accused person, as well as a person subject to the execution of a EAW, is fully able to exercise his rights.

Non-regression clause: it should be ensured that setting common minimum standards in accordance with this Directive does not have the effect of lowering standards in certain Member States and that the standards set in the ECHR or other relevant international agreements are maintained. Member States remain entirely at liberty to set standards higher than those agreed in this Directive.

## Judicial cooperation in criminal matters: right to interpretation and to translation in criminal proceedings. Initiative Belgium, Germany, Estonia, Spain, France, Italy, Luxembourg, Hungary, Austria, Portugal, Romania, Finland and Sweden

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PURPOSE: explanatory memorandum relating to the initiative by a group of Member States for a Directive of the European Parliament and of the Council on the rights to interpretation and to translation in criminal proceedings.

CONTENT: Article 82(1) of the Treaty on the Functioning of the European Union provides that judicial cooperation in criminal matters in the European Union shall be based on the principle of mutual recognition of judgments and judicial decisions. For the purpose of enhancing mutual trust within the EU, it is important that, complementary to the Charter of Fundamental Rights and the European Court of Human Rights, there exist EU standards for the protection of procedural rights which are properly implemented and applied in the Member States.

There is wide support among experts for EU action on procedural rights, through legislation and other measures. These sentiments are echoed by the European Parliament (see [INI/2009/2012](#)) and by the European Commission ([COM\(2009\)0262](#)). In April 2004 the Commission presented a proposal for a Framework Decision on certain procedural rights in criminal proceedings throughout the EU ([COM\(2004\)0328](#)). After 3 years of discussion, it appeared however impossible to reach (unanimous) agreement on the text.

Subsequently, other avenues were explored with a view to reaching the objectives set out by that proposal, which aimed at enhancing procedural rights of suspected and accused persons in criminal proceedings. In this light:

- the Swedish Presidency presented in 2009 a proposal for a Roadmap for strengthening procedural rights of suspected or accused persons in criminal proceedings. The Roadmap was very much welcomed by Member States, was soon transformed into a Resolution of the Council and adopted by on 30 November 2009. In the Roadmap, the Council agrees that action needs to be taken at the level of the EU in order to strengthen the rights of suspected or accused persons in criminal proceedings. The Roadmap enumerates six measures as the basis for future action. One of these measures is the right to translation and interpretation in criminal proceedings.
- in view of the step-by-step approach set out in the Roadmap, the Commission presented on 8 July 2009 a proposal for a Council Framework Decision on the right to interpretation and to translation in criminal proceedings;
- on 15 July 2009, the Swedish Presidency presented a proposal for a Resolution of the Council and of the Representatives of the Governments of the Member States meeting within the Council fostering the implementation by Member States of the right to interpretation and to translation in criminal proceedings. This Resolution aimed at accompanying and complementing the proposal for a Framework Decision presented by the Commission;
- after intense negotiations, the Council reached on 23 October 2009 a general approach regarding both the proposal for a Council Framework Decision on the right to interpretation and to translation in criminal proceedings and the accompanying Resolution.

Due to the entry into force of the Lisbon Treaty on 1 December 2009, the proposal for a Framework Decision needs to be transformed into a proposal for a Directive in order to allow continuation of the work to be carried out on the text. Since the Commission which is in place until 1 February 2010 has only a care-taker task and can, in principle, not adopt new proposals, it is felt appropriate that a group of Member States presents the text of the general approach on the proposal for a Council Framework Decision as an initiative for a Directive of the European Parliament and of the Council. Such initiative, taken in accordance with Article 76(b) TFEU, will allow:

- the work to continue under the Lisbon Treaty where it ended under the Amsterdam/Nice Treaties;
- no time to be wasted so that the EU citizens can as soon as possible benefit from the rights set out in the new instrument to be adopted by the European Parliament and by the Council in the context of the ordinary legislative procedure (former co decision procedure).

The Impact Assessment carried out by the Commission in relation to its proposal for a Council Framework Decision is equally valid for the

initiative for a Directive, since it covers exactly the same subject matter. Since the proposal for a Framework Decision is replaced by the initiative for a Directive, the said Resolution can only be (formally) adopted when the Directive is adopted.

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Regarding a directive on the rights to interpretation and translation in criminal proceedings, the Council confirmed the agreement reached on 27 May 2010 by the Permanent Representatives Committee on a compromise text which was negotiated in recent weeks between representatives of the Council, the European Parliament and the Commission ([doc. 10420/10](#)).

Ministers also welcomed that the agreement on this file was reached so quickly and that talks with the European Parliament point to a first reading agreement in the coming weeks.

The directive is based on an initiative by 13 Member States (Belgium, Germany, Estonia, Spain, France, Italy, Luxembourg, Hungary, Austria, Portugal, Romania, Finland and Sweden) following an agreement that was reached unanimously by the Council in October 2009 in respect of a Commission proposal from July 2009. The text also takes account of a proposal that was submitted by the Commission in March 2010.

The directive is part of a wider package of legislative and non-legislative initiatives that aim at strengthening procedural rights of suspected or accused persons in criminal proceedings. The Council unanimously agreed on this wider package, or roadmap, in October 2009.

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The Committee on Civil Liberties, Justice and Home Affairs adopted the report drafted by Sarah LUDFORD (EPP, UK) on the draft directive of the European Parliament and of the Council on the rights to interpretation and to translation in criminal proceedings.

The committee recommended that the European Parliament's position at first reading under the ordinary legislative procedure (formerly known as the codecision procedure) amends the Commission's proposal as follows:

Reference to the Charter of Fundamental Rights and the (ECHR): clear reference is made in the draft Directive to the European Convention for the Protection of Human Rights and Fundamental Freedoms (ECHR) which enshrines the right to a fair trial. In this context, this draft Directive should set minimum rules. Member States should be able to extend the rights set out in this Directive in order to provide a higher level of protection also in situations not explicitly dealt with in this Directive. The level of protection should never go below the standards provided by the European Convention on Human Rights or the EU Charter of Fundamental Rights as interpreted in the case-law of the European Court of Human Rights or the European Court of Justice.

Roadmap for strengthening procedural rights of suspected and accused persons in criminal proceedings: the Directive makes reference to the this [Roadmap](#) which, taking a step-by-step approach, calls for the adoption of measures regarding the right to translation and interpretation (measure A), the right to information on rights and information about the charges (measure B), the right to legal advice and legal aid (measure C), the right to communication with relatives, employers and consular authorities (measure D), and regarding special safeguards for suspected or accused persons who are vulnerable (measure E). This Directive relates to measure A of the Roadmap. It lays down common minimum standards to be applied in the fields of interpretation and translation in criminal proceedings with a view to enhancing mutual trust among Member States.

Scope: new provisions are introduced as regards minor offences (such as road offences). It is stipulated that where the law of a Member State provides for the imposition of a sanction regarding minor offences by an authority other than a court having jurisdiction in criminal matters, and that sanction may be appealed to such a court, then this Directive shall only apply to the proceedings before that court following such an appeal.

It is also stated that this Directive must not affect rules of national law concerning the presence of a legal counsel during any stage of the criminal proceedings, nor must it affect rules of national law concerning the right of access of a suspected or accused person to documents in criminal proceedings.

Right to interpretation: Member States shall ensure that a procedure or mechanism is in place to ascertain whether the suspected or accused person understands and speaks the language of the criminal proceedings and needs the assistance of an interpreter. The right to interpretation includes assistance of persons with hearing or speech impediments.

Member States shall ensure that, in accordance with procedures in national law, the suspected or accused person has the right to challenge a decision finding that there is no need for interpretation and, when interpretation has been provided, the possibility to complain that the quality of the interpretation is not sufficient to ensure the fairness of the proceedings.

Where appropriate, technology such as videoconferencing or communication by telephone or internet may be employed, unless the physical presence of the interpreter is required in order to safeguard the fairness of the proceedings. In proceedings for the execution of a European Arrest Warrant, the executing Member State shall ensure that its competent authorities provide any person subject to such proceedings who does not understand or speak the language of the proceedings, with interpretation.

Right to translation of essential documents: it is provided that the Member States shall ensure that, within a reasonable period of time, a suspected or accused person who does not understand the language of the criminal proceedings concerned is provided with written translation of all documents which are essential to ensure that he is able to exercise the right to defend himself and to safeguard the fairness of the proceedings. Essential documents include decisions depriving a person of his liberty, the charge/indictment and any judgment. The competent authorities shall decide in any given case whether any other document is essential. The suspected or accused person or his legal

counsel may submit a reasoned request to this effect. Passages of essential documents which are not relevant for the suspected or accused person to have knowledge of the case against him do not have to be translated. An oral translation or an oral summary of the essential documents may be provided instead of a written translation, on condition that such oral translation or oral summary does not affect the fairness of the proceedings. As with the interpretation, translation provided shall be of a quality sufficient to safeguard the fairness of the proceedings, in particular by ensuring that the suspected or accused person in criminal proceedings has knowledge of the case against him and is able to exercise the right to defend himself.

**Quality of translation:** in order to promote the adequacy of interpretation and translation and efficient access to it, Member States shall endeavour to establish a register or registers of independent translators and interpreters who are appropriately qualified. Once established, such register or registers should be made available to legal counsel and relevant authorities. Member States shall ensure that interpreters and translators will be required to observe confidentiality regarding interpretation and translation provided under this Directive.

**Training:** new provisions are laid down to allow Member States to request those responsible for the training of judges, prosecutors and judicial staff involved in criminal proceedings to give special attention to the particularities of communicating with the assistance of an interpreter so as to ensure efficient and effective communication.

**Keeping of record:** Member States shall also ensure that when interviews with a suspected or accused person have been conducted by an investigative or judicial authority with the aid of an interpreter, when an oral translation or oral summary of essential documents is provided in the presence of such an authority or when there is a waiver of rights, it will be noted that these events have occurred, using the recording procedure in accordance with the national law of the Member State concerned.

**Report and entry into force:** it is provided that 4 years after the publication of this Directive in the Official Journal, the Commission shall submit a report to the European Parliament and to the Council, assessing the extent to which the Member States have taken the necessary measures in order to comply with this Directive, accompanied, if necessary, by legislative proposals. Member States shall comply with this Directive within a delay of 3 years after the publication of this Directive in the Official Journal.

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The European Parliament adopted by 637 votes to 21, with 19 abstentions, a legislative resolution on the draft directive of the European Parliament and of the Council on the rights to interpretation and to translation in criminal proceedings.

Parliament adopted its position at first reading under the ordinary legislative procedure (formerly known as the codecision procedure). The amendments adopted in plenary are a result of a compromise reached between the European Parliament and the Council. They amend the Commission proposal as follows:

**Reference to the Charter of Fundamental Rights and the (ECHR):** clear reference is made in the draft Directive to the European Convention for the Protection of Human Rights and Fundamental Freedoms (ECHR) which enshrines the right to a fair trial. In this context, this draft Directive should set minimum rules. Member States should be able to extend the rights set out in this Directive in order to provide a higher level of protection also in situations not explicitly dealt with in this Directive. The level of protection should never go below the standards provided by the European Convention on Human Rights or the EU Charter of Fundamental Rights as interpreted in the case-law of the European Court of Human Rights or the European Court of Justice.

**Roadmap for strengthening procedural rights of suspected and accused persons in criminal proceedings:** the Directive makes reference to the this [Roadmap](#) which, taking a step-by-step approach, calls for the adoption of measures regarding the right to translation and interpretation (measure A), the right to information on rights and information about the charges (measure B), the right to legal advice and legal aid (measure C), the right to communication with relatives, employers and consular authorities (measure D), and regarding special safeguards for suspected or accused persons who are vulnerable (measure E). This Directive relates to measure A of the Roadmap. It lays down common minimum standards to be applied in the fields of interpretation and translation in criminal proceedings with a view to enhancing mutual trust among Member States.

**Scope:** new provisions are introduced as regards minor offences (such as road offences). It is stipulated that where the law of a Member State provides for the imposition of a sanction regarding minor offences by an authority other than a court having jurisdiction in criminal matters, and that sanction may be appealed to such a court, then this Directive shall only apply to the proceedings before that court following such an appeal.

It is also stated that this Directive must not affect rules of national law concerning the presence of a legal counsel during any stage of the criminal proceedings, nor must it affect rules of national law concerning the right of access of a suspected or accused person to documents in criminal proceedings.

**Right to interpretation:** Member States shall ensure that a procedure or mechanism is in place to ascertain whether the suspected or accused person understands and speaks the language of the criminal proceedings and needs the assistance of an interpreter. The right to interpretation includes assistance of persons with hearing or speech impediments.

Member States shall ensure that, in accordance with procedures in national law, the suspected or accused person has the right to challenge a decision finding that there is no need for interpretation and, when interpretation has been provided, the possibility to complain that the quality of the interpretation is not sufficient to ensure the fairness of the proceedings.

Where appropriate, technology such as videoconferencing or communication by telephone or internet may be employed, unless the physical presence of the interpreter is required in order to safeguard the fairness of the proceedings. In proceedings for the execution of a European Arrest Warrant, the executing Member State shall ensure that its competent authorities provide any person subject to such proceedings who does not understand or speak the language of the proceedings, with interpretation.

**Right to translation of essential documents:** it is provided that the Member States shall ensure that, within a reasonable period of time, a suspected or accused person who does not understand the language of the criminal proceedings concerned is provided with written translation of all documents which are essential to ensure that he is able to exercise the right to defend himself and to safeguard the fairness

of the proceedings. Essential documents include decisions depriving a person of his liberty, the charge/indictment and any judgment. The competent authorities shall decide in any given case whether any other document is essential. The suspected or accused person or his legal counsel may submit a reasoned request to this effect. Passages of essential documents which are not relevant for the suspected or accused person to have knowledge of the case against him do not have to be translated. An oral translation or an oral summary of the essential documents may be provided instead of a written translation, on condition that such oral translation or oral summary does not affect the fairness of the proceedings. As with the interpretation, translation provided shall be of a quality sufficient to safeguard the fairness of the proceedings, in particular by ensuring that the suspected or accused person in criminal proceedings has knowledge of the case against him and is able to exercise the right to defend himself.

Quality of translation: in order to promote the adequacy of interpretation and translation and efficient access to it, Member States shall endeavour to establish a register or registers of independent translators and interpreters who are appropriately qualified. Once established, such register or registers should be made available to legal counsel and relevant authorities. Member States shall ensure that interpreters and translators will be required to observe confidentiality regarding interpretation and translation provided under this Directive.

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

Keeping of record: Member States shall also ensure that when interviews with a suspected or accused person have been conducted by an investigative or judicial authority with the aid of an interpreter, when an oral translation or oral summary of essential documents is provided in the presence of such an authority or when there is a waiver of rights, it will be noted that these events have occurred, using the recording procedure in accordance with the national law of the Member State concerned.

Report and entry into force: it is provided that 4 years after the publication of this Directive in the Official Journal, the Commission shall submit a report to the European Parliament and to the Council, assessing the extent to which the Member States have taken the necessary measures in order to comply with this Directive, accompanied, if necessary, by legislative proposals. Member States shall comply with this Directive within a delay of 3 years after the publication of this Directive in the Official Journal.

Territorial measures: the United Kingdom and Ireland have notified their wish to take part in the adoption and application of this Directive. Denmark, on the other hand, is not taking part in the adoption of this Directive and is not bound by it or subject to its application.

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

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

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

Its main provisions may be summarised as follows:

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

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

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

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

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

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

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

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

Right to translation of essential documents: Member States shall ensure that suspected or accused persons who do not understand the language of the criminal proceedings concerned are, within a reasonable period of time, provided with a written translation of all documents which are essential to ensure that they are able to exercise their right of defence. Essential documents shall include any decision depriving a

person of his liberty, any charge or indictment, and any judgment. The competent authorities shall, in any given case, decide whether any other document is essential. There shall be no requirement to translate passages of essential documents which are not relevant for the purposes of enabling suspected or accused persons to have knowledge of the case against them.

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

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

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

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

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

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

Non-regression clause: nothing in this Directive shall be construed as limiting or derogating from any of the rights and procedural safeguards that are ensured under the European Convention for the Protection of Human Rights and Fundamental Freedoms (ECHR), the Charter of Fundamental Rights of the European Union, other relevant provisions of international law or the law of any Member State which provides a higher level of protection. In this context, and with a view to strengthening, within the EU, the minimum standards in regard to the right to a fair trial, the Member States should be able to extend the rights in order to provide a higher level of protection also in situations not explicitly dealt with in this Directive. The level of protection should never fall below the standards provided by the ECHR or the Charter.

Report: the Commission shall, by 27 October 2014, submit a report to the European Parliament and to the Council, assessing the extent to which the Member States have taken the necessary measures in order to comply with this Directive, accompanied, if necessary, by legislative proposals.

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

ENTRY INTO FORCE: 15/10/2010.

TRANSPPOSITION: 27/10/2013.

## Judicial cooperation in criminal matters: right to interpretation and to translation in criminal proceedings. Initiative Belgium, Germany, Estonia, Spain, France, Italy, Luxembourg, Hungary, Austria, Portugal, Romania, Finland and Sweden

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The Commission presents a report on the implementation of Directive 2010/64/EU of the European Parliament and of the on the right to interpretation and translation in criminal proceedings.

It recalls that the Directive is the first measure following the Roadmap for strengthening procedural rights of suspected or accused persons in criminal proceedings adopted in 2009. By providing common minimum standards for procedural rights in criminal proceedings, the Directive contributes to the general objective of increasing mutual trust.

The report focuses on the measures Member States have taken so far to implement the Directive. It assesses whether Member States have implemented the Directive within the given timeframe, and whether national legislations achieve the objectives and fulfil the requirements of the Directive.

### Transposition

Member States had to transpose the Directive into national law by 27 October 2013. At the date of expiry of the transposition period, 16 Member States had not communicated the necessary measures to the Commission: Belgium, Bulgaria, Ireland, Greece, Spain, Italy, Cyprus, Lithuania, Luxembourg, Hungary, Malta, Austria, Romania, Slovenia, Slovakia and Finland. As a result, the Commission decided on 29 November 2013 to launch infringement proceedings against those 16 Member States for non-communication or partial communication of transposing measures.

### General assessment

The Commission states that the Directive has a significant impact on the protection of suspected or accused persons in Member States by providing a more consistent implementation of the rights and guarantees set out in the Charter of Fundamental Rights and the European Convention on Human Rights through the establishment common European minimum standards. Overall, the Directive has provided EU



added value by raising the level of protection of citizens involved in criminal proceedings, especially in some Member States where the right to translation and interpretation did not exist before. The extent of the Directives impact on Member States varies according to the national criminal justice systems in place. The evaluation highlights certain difficulties on key provisions of the Directive in some Member States.

#### Communication between suspected or accused persons and their legal counsel

The Directive provides the right to receive interpretation services for communication between suspected or accused persons and their legal counsel in direct connection with any questioning or hearing during the proceedings or with the lodging of an appeal or other procedural applications. Most Member States have explicitly introduced a provision into national law. However, in some Member States, this right is only referred to in legal practice, commentaries of national acts or case law and provisions ensuring the general right to interpretation. This affects compliance with the Directive. In some other Member States, contrary to the Directive, this right is conditional on a specific request by the suspected or accused person, or alternatively by their legal counsel. In one Member State, criminal authorities first appoint the legal counsel as an interpreter if they know the language of the suspected or accused person, and only alternatively provide a qualified interpreter.

#### Translation of essential documents

Contrary to the requirements of the Directive, in eight Member States, the national legislation does not state that translation of essential documents will be provided within a reasonable period of time. This affects compliance with the Directive. Other problems have arisen with regard to:

- the definition of essential documents;
- the decision on the essential character of a document;

#### Costs of interpretation and translation

Almost all Member States, except three, have transposed correctly this obligation. In most Member States, the requirement to cover the costs of interpretation and translation irrespective of the outcome of the proceedings has been implied from other national provisions ensuring that the right to interpretation and translation applies to the pre-trial and trial phase and that the related costs are not borne by the suspected or accused person. Some Member States provide that the costs of interpretation and translation in criminal proceedings are borne by the State. Some other Member States provide that the costs are borne by specific authorities (e.g. pre-trial authorities at the pre-trial stage and courts at the court stage).

#### Revision

The Commission considers that its evaluation shows that there is currently no need to revise the Directive but that application of the Directive can be further improved in practice. It will continue to assess Member States' compliance with the Directive and will take every appropriate measure to ensure conformity with its provisions throughout the European Union.