

Procedure file

Basic information	
COD - Ordinary legislative procedure (ex-codecision procedure) Directive	Procedure lapsed or withdrawn
2010/0050(COD)	
Judicial cooperation in criminal matters: right to interpretation and translation in criminal proceedings	
Subject 1.10 Fundamental rights in the EU, Charter 7.40.04 Judicial cooperation in criminal matters	

Key players			
European Parliament			
Council of the European Union	Council configuration Justice and Home Affairs (JHA)	Meeting 3018	Date 03/06/2010
European Commission	Commission DG Justice and Consumers	Commissioner REDING Viviane	

Key events			
09/03/2010	Legislative proposal published	COM(2010)0082	Summary
24/03/2010	Committee referral announced in Parliament, 1st reading		
03/06/2010	Debate in Council	3018	Summary

Technical information	
Procedure reference	2010/0050(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
Stage reached in procedure	Procedure lapsed or withdrawn
Committee dossier	LIBE/7/02495

Documentation gateway					
Legislative proposal		COM(2010)0082	09/03/2010	EC	Summary

Additional information

National parliaments	IPEX
European Commission	EUR-Lex

Judicial cooperation in criminal matters: right to interpretation and translation in criminal proceedings

PURPOSE: to set common minimum standards as regards the right to interpretation and translation in criminal proceedings throughout the EU.

PROPOSED ACT: Directive of the European Parliament and of the Council.

BACKGROUND: the right to interpretation and translation, which stems from the European Convention on Human Rights (ECHR), is fundamental for a person facing a criminal charge who does not understand the language of the proceedings so that the suspect knows the charges against him and understands the procedure. The suspect must be in a position to understand of what he is accused. Translations should be provided of essential procedural documents. In accordance with the ECHR, interpretation and translation must be provided free of charge.

In 2004, the Commission presented a wide-ranging [proposal for legislation](#) relating to certain procedural rights for persons involved in criminal proceedings but the Council was unable to adopt this proposal.

On 30 November 2009, the Justice Council adopted a [road map](#) on strengthening procedural rights of suspected or accused persons in criminal proceedings, recommending the adoption, on a step-by-step basis of five measures relating to procedural rights and inviting the Commission to present the necessary proposals. The first measure cited in the road map concerns the right to translation and interpretation.

It should therefore be considered as part of a package of legislation to be presented over the next few years which will provide a minimum set of procedural rights in criminal proceedings in the EU.

The Stockholm Programme, adopted by the European Council of 10-11 December 2009, reaffirmed the importance of the rights of the individual in criminal proceedings as a fundamental value of the Union and an essential component of mutual trust between Member States and of public confidence in the EU. The Stockholm Programme refers to the Roadmap as being integral part of the multiannual programme and calls on the Commission to come forward with appropriate proposals for its swift implementation.

Overall, this proposal closely resembles the proposal for a [framework decision](#) presented on 8 July 2009. The text was debated within the Council working groups. An agreement was reached on a general approach at the Justice and Home Affairs Council meeting on 23 October 2009, but, due to lack of time, it was not adopted by 1 December 2009, the date of the entry into force of the Treaty of Lisbon. The previous proposal became obsolete and the purpose of the current text is to replace it.

IMPACT ASSESSMENT: an impact assessment was carried out in July 2009. (see [SEC\(2009\)916](#)). This remains valid for the current proposal for a directive. The options envisaged by this impact assessment were the following:

- Option 1: maintaining the status quo, entailing no EU action;
- Option 2: non-legislative measures (such as recommendations), which would encourage exchanges between Member States and help to identify best practice;
- Option 3: a measure restricted to cross-border cases;
- Option 4: a new instrument covering all rights along the lines of the 2004 proposal;
- Option 5: a step-by-step approach, beginning with measures on access to interpretation and translation, involving a new Directive requiring Member States to provide minimum standards only for access to interpretation and translation.

The Impact Assessment identified the combination of Options 2 (non-legislative measures) and 5 (step-by-step approach) as the preferred approach maximising synergies between legislative and non-legislative action.

LEGAL BASIS: Article 82(2) of the Treaty on the Functioning of the European Union (TFEU). The objective of the proposal cannot be sufficiently achieved by Member States alone, since the aim of the proposal is to promote trust between them and it is therefore important to agree on a common minimum standard that applies throughout the EU. The proposal will approximate Member States' substantive procedural rules in respect of interpretation and translation in criminal proceedings. It complies with the subsidiarity principle.

CONTENT: the proposal seeks to improve the rights of suspects who do not understand and speak the language of the proceedings. It notes that common minimum standards in relation to these rights should facilitate the application of the principle of mutual recognition, thereby improving the functioning of judicial co-operation between Member States. The main points are as follows:

Scope of application: the scope covers criminal proceedings and proceedings for the execution of a European Arrest Warrant. It covers any person from the time that they are suspected of having committed a criminal offence until the conclusion of the proceedings (including any appeal). It is an important point that European Arrest Warrant cases are covered since the Framework Decision on the European Arrest Warrant only addresses these rights in general terms. In this respect, the proposal is a further development of Article 5 of the European Convention on Human Rights (ECHR).

Since the case-law of the European Court of Human Rights (ECtHR) has clarified that persons being questioned in relation to offences, whether or not formally charged, should be covered by Article 6 ECHR (right to a fair trial covering provisions on language), persons arrested or detained in connection with a criminal charge also come within the ambit of this provision. These rights start to apply from the time when the person is informed that he is suspected of having committed an offence.

Right to interpretation: this Article lays down the basic principle that interpretation should be provided during the investigative and judicial phases of the proceedings, i.e. during police questioning, at trial and at any interim hearings or appeals. This includes interpretation of communication between the suspected or accused person and his lawyer. There should be a system in place to ascertain whether the person needs an interpreter and for the person to challenge a decision that an interpreter is not needed or to challenge the quality of the interpretation. European Arrest Warrant proceedings are explicitly covered.

Right to translation of essential documents: the suspect has the right to written translation of essential documents in order to safeguard the fairness of the proceedings. In *Kamasinski v. Austria*, the ECtHR stated that the right to interpretation applied to documentary material and that the accused should have sufficient knowledge of the case against him to enable him to defend himself. The essential documents for the criminal proceedings should therefore include the charge sheet or indictment and any relevant documentary material such as key witness statements needed in order to understand in detail, the nature and cause of the accusation against him in accordance with Article 6 of the ECHR. Translation should also be provided of any detention order or order depriving the person of his liberty and the judgment, which is necessary for the person to exercise his right of appeal (ECHR Protocol 7, Article 2). If the documents are very lengthy, translations can be limited to the relevant passages.

In respect of proceedings for the execution of a European Arrest Warrant, the European Arrest Warrant should be translated. A person may also waive their right to translation on the condition that they have received legal advice beforehand.

Costs of interpretation and translation: the costs of interpretation and translation are to be met by the Member State. The accused has the right to interpretation free of charge.

Quality of the interpretation and translation: this Article sets out the basic requirement to safeguard the quality of interpretation and translation. Recommendations in this respect can be found in the Report of the Reflection Forum on Multilingualism and Interpreter Training.

Non-regression clause: the purpose of this clause is to ensure that setting common minimum standards in accordance with the Directive does not have the effect of lowering standards in certain Member States and that the standards set in the ECHR, in the Charter of Fundamental Rights and in other relevant provisions of international law are maintained. Member States remain entirely at liberty to set standards higher than those agreed in this Directive.

Report: 12 months after implementation, the Commission must 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 provision: in accordance with the relevant provisions of the Treaty, the United Kingdom and Ireland have notified their wish to participate in the adoption and application of this directive. Denmark will not participate in the adoption of the directive and will not therefore be bound by it or subject to its application.

BUDGETARY IMPLICATION: the proposal has no implications for the Community budget.

Judicial cooperation in criminal matters: right 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 (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 following an agreement that was reached unanimously by the Council in October 2009 in respect of a Commission proposal from July 2009.

The directive will substantially enhance the rights for suspected and accused persons, in particular as regards the right to interpretation and translation.

It 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.