III

(Preparatory acts)

INITIATIVES OF THE MEMBER STATES

Initiative of the Kingdom of Belgium, the Federal Republic of Germany, the Republic of Estonia, the Kingdom of Spain, the French Republic, the Italian Republic, the Grand-Duchy of Luxembourg, the Republic of Hungary, the Republic of Austria, the Portuguese Republic, Romania, the Republic of Finland and the Kingdom of Sweden with a view to the adoption of a Directive of the European Parliament and of the Council on the rights to interpretation and to translation in criminal proceedings

(2010/C 69/01)

THE EUROPEAN PARLIAMENT AND THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty on the Functioning of the European Union, and in particular Article 82(2)(b) thereof,

Having regard to the resolution of the Council of 30 November 2009 on a Roadmap for strengthening procedural rights of suspected or accused persons in criminal proceedings ([1]), in particular to Measure A in the Annex thereof,

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

Acting in accordance with the ordinary legislative procedure ([2]),

Whereas:

(1) The European Union has set itself the objective of maintaining and developing an area of freedom, security and justice. According to the conclusions of the European Council in Tampere of 15 and 16 October 1999, and in particular point 33 thereof, the principle of mutual recognition should become the cornerstone of judicial cooperation in both civil and criminal matters within the European Union.

(2) On 29 November 2000 the Council, in accordance with the Tampere Conclusions, adopted a programme of measures to implement the principle of mutual recognition of decisions in criminal matters ([3]). The introduction to the programme of measures states that mutual recognition is 'designed to strengthen cooperation between Member States but also to enhance the protection of individual rights'.

(3) Implementation of the principle of mutual recognition of decisions in criminal matters presupposes that Member States have trust in each other's criminal justice systems. The extent of the mutual recognition exercise is very much dependent on a number of parameters, which include mechanisms for safeguarding the rights of suspects and common minimum standards necessary to facilitate the application of the principle of mutual recognition.

(4) Mutual recognition can only operate effectively in a spirit of confidence, whereby not only judicial authorities, but all actors in the criminal process see decisions of the judicial authorities of other Member States as equivalent to their own, implying not only trust in the adequacy of one's partners' rules, but also trust that those rules are correctly applied.

(5) 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.

([1]) OJ C 295, 4.12.2009, p. 1.

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

([3]) OJ C 12, 15.1.2001, p. 10.

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

(7) Common minimum rules should lead to increased confidence in the criminal justice systems of all Member States, which in turn should lead to more efficient judicial cooperation in a climate of mutual trust. Such common minimum rules should be applied in the fields of interpretation and translation in criminal proceedings.

(8) The rights to interpretation and to translation for those who do not understand the language of the proceedings are enshrined in Article 6 of the ECHR, as elaborated upon by the case law of the European Court of Human Rights. The provisions of this Directive facilitate the application of those rights in practice. To this end, this Directive intends to ensure the rights of a suspected or accused person to interpretation and to translation in criminal proceedings with a view to safeguarding that person's right to fair proceedings.

(9) The rights provided for in this Directive should also apply to proceedings for the execution of a European Arrest Warrant within the limits provided for by this Directive. Executing Members States should provide, and bear the costs of, interpretation and translation for the benefit of the requested person who does not understand or speak the language of the proceedings.

(10) The provisions of this Directive should ensure that the rights of the suspected or accused person who does not speak or understand the language of the proceedings to understand the suspicions or accusations brought against him and to understand the proceedings in order to be able to exercise his rights are protected by providing free and accurate linguistic assistance. The suspected or accused person should be able, *inter alia*, to explain to his legal counsel his version of the events, point out any statements with which he disagrees and make his legal counsel aware of any facts that should be put forward in the defence. It is recalled in this connection that the provisions of this Directive set minimum rules. Member States may 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 fall below the standards provided by the ECHR, as interpreted in the case-law of the European Court of Human Rights.

(11) Member States should not be obliged to ensure interpretation of communication between the suspected or accused person and his legal counsel in cases where they can effectively communicate in the same language. Neither should the Member States be obliged to ensure interpretation of such communication where the right to interpretation is clearly used for purposes other than exercising fair trial rights in the proceedings concerned.

(12) The finding that there is no need for interpretation or translation should be subject to the possibility of review, in accordance with national law. Such review may be carried out, for example, through a specific complaint procedure, or in the context of an ordinary appeal procedure against decisions on the merits.

(13) Appropriate assistance should be provided also to suspected or accused persons suffering from hearing impediments.

(14) The duty of care towards suspected or accused persons who are in a potentially weak position, in particular because of physical impairments which affect their ability to communicate effectively, underpins a fair administration of justice. The prosecution, law enforcement and judicial authorities should therefore ensure that these persons are able to exercise effectively the rights provided for in this Directive, for example by paying attention to any potential vulnerability that affects their ability to follow the proceedings and make themselves understood, and by taking appropriate steps to ensure these rights.

(15) Safeguarding the fairness of the proceedings requires that essential documents, or at least the important passages of such documents, be translated for the benefit of the suspected or accused person. It is up to the authorities of the Member States to decide which documents should be translated, in accordance with national law. Some documents should always be considered essential documents that should be translated, such as the decision depriving a person of his liberty, the charge or indictment and any judgment.

(16) A waiver of the right to written translation of documents should be unequivocal, with minimum safeguards, and should not run counter to any important public interest.

(17) This Directive respects the fundamental rights and observes the principles recognised by the Charter of Fundamental Rights of the European Union. In particular, this Directive seeks to promote the right to liberty, the right to a fair trial and the right of defence.

(18) Member States should ensure that the provisions of this Directive, where they correspond to rights guaranteed by the ECHR, are implemented consistently with those of the ECHR as elaborated upon by the relevant case-law of the European Court of Human Rights.

(19) Since the objective of this Directive, that is, achieving common minimum standards, cannot be sufficiently achieved by the Member States and can therefore, by reason of the scale and effects of the proposed action, be better achieved at Union level, the Union may adopt measures in accordance with the principle of subsidiarity as referred to and defined in Article 5 of the Treaty on European Union. In accordance with the principle of proportionality, as set out in that Article, this Directive does not go beyond what is necessary in order to achieve that objective,

HAVE ADOPTED THIS DIRECTIVE:

Article 1

Scope

1. This Directive lays down rules concerning the rights to interpretation and to translation in criminal proceedings and proceedings for the execution of a European Arrest Warrant.

2. Those rights apply to any person from the time that person is made aware by the competent authorities of a Member State 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.

3. This Directive shall 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.

Article 2

Right to interpretation

1. Member States shall ensure that a suspected or accused person who does not understand or speak the language of the criminal proceedings concerned is provided 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 does not affect rules of national law concerning the presence of a legal counsel during any stage of the criminal proceedings.

2. Member States shall ensure that a person with a hearing impediment receives interpretation assistance, if appropriate for that person.

3. Member States shall 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.

4. Member States shall ensure that at some stage in the proceedings, in accordance with national law, there is 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.

5. In proceedings for the execution of a European Arrest Warrant, the executing Member State shall ensure that its competent authorities provide any person subject to such proceedings who does not understand or speak the language of the proceedings, with interpretation in accordance with this Article.

Article 3

Right to translation of essential documents

1. Member States shall ensure that a suspected or accused person who does not understand the language of the criminal proceedings concerned is 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.

2. The competent authorities shall decide which are the essential documents to be translated under paragraph 1. The essential documents to be translated, in whole or the important passages thereof, shall 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.

3. The suspected or accused person, or his legal counsel, may submit a reasoned request for translation of further documents which are necessary for the effective exercise of the right of defence.

4. Member States shall ensure that at some stage in the proceedings, in accordance with national law, there is the possibility of a review if translation of a document referred to in paragraphs 2 and 3 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.

5. In proceedings for the execution of a European Arrest Warrant, the executing Member State shall ensure that its competent authorities provide any person subject to such proceedings who does not understand the language in which the European Arrest Warrant is drawn up, or into which it has been translated by the issuing Member State, with a translation of that document.

6. Provided that this does not affect the fairness of the proceedings, an oral translation or an oral summary of the documents referred to in this Article may, where appropriate, be provided instead of a written translation.

7. A person who has a right under this Article to translation of documents may, at any time, waive this right.

Article 4

Costs of interpretation and translation

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

Article 5

Quality of the interpretation and translation

Member States shall take concrete measures 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 European Arrest Warrant, is fully able to exercise his rights.

Article 6

Non-regression clause

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

Article 7

Implementation

Member States shall take the necessary measures to comply with the provisions of this Directive by … (*) at the latest.

By the same date Member States shall transmit to the Council and to the Commission the text of the provisions transposing into their national law the obligations imposed on them under this Directive.

Article 8

Report

The Commission shall, by … (**), submit a report to the European Parliament and to the Council, assessing the extent to which the Member States have taken the necessary measures in order to comply with this Directive, accompanied, if necessary, by legislative proposals.

Article 9

Entry into force

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

Done at Brussels, …

For the European Parliament	*For the Council*
The President	*The President*
…	…

(*) 30 months after the publication of this Directive in the Official Journal.

(**) 42 months after the publication of this Directive in the Official Journal.