



EUROPEAN PARLIAMENT

2009 - 2014

---

*Committee on Civil Liberties, Justice and Home Affairs*

---

**2010/0801(COD)**

5.3.2010

**\*\*\*|**

## **DRAFT REPORT**

on the directive of the European Parliament and of the Council on the rights to interpretation and to translation in criminal proceedings  
(00001/2010 – C7-0005/2010 – 2010/0801(COD))

Committee on Civil Liberties, Justice and Home Affairs

Rapporteur: Sarah Ludford

### ***Symbols for procedures***

- \* Consultation procedure
- \*\*\* Consent procedure
- \*\*\*I Ordinary legislative procedure (first reading)
- \*\*\*II Ordinary legislative procedure (second reading)
- \*\*\*III Ordinary legislative procedure (third reading)

(The type of procedure depends on the legal basis proposed by the draft act.)

### ***Amendments to a draft act***

In amendments by Parliament, amendments to draft acts are highlighted in ***bold italics***. Highlighting in *normal italics* alerts the relevant departments to parts of the draft act which may require correction when the final text is prepared – for instance, obvious errors or omissions in a language version. Suggested corrections of this kind are subject to the agreement of the departments concerned.

The heading for any amendment to an existing act which the draft act seeks to amend includes a third and fourth line identifying respectively the existing act and the provision in that act affected by the amendment. Passages in a provision of an existing act that Parliament wishes to amend, but the draft act has left unchanged, are highlighted in **bold**. Any deletions that Parliament wishes to make in passages of this kind are indicated thus: [...].

## CONTENTS

	<b>Page</b>
DRAFT EUROPEAN PARLIAMENT LEGISLATIVE RESOLUTION.....	5
EXPLANATORY STATEMENT.....	28



## DRAFT EUROPEAN PARLIAMENT LEGISLATIVE RESOLUTION

**on the directive of the European Parliament and of the Council on the rights to interpretation and to translation in criminal proceedings  
(00001/2010 – C7-0005/2010 – 2010/0801(COD))**

**(Ordinary legislative procedure: first reading)**

*The European Parliament,*

- having regard to the initiative of a group of Member States (00001/2010),
  - having regard to point (b) of the second subparagraph of Article 82(2) and Article 289(4) of the Treaty on the Functioning of the EU, pursuant to which the Council submitted the initiative to Parliament (C7-0005/2010),
  - having regard to Article 294(3) and (15) of the Treaty on the Functioning of the EU,
  - having regard to [the reasoned opinions sent to its President by national parliaments/the reasoned opinion sent to its President by a national parliament] on whether the initiative complies with the principle of subsidiarity,
  - having regard to the opinion of the Commission (COM[.....]),
  - having regard to Rules 44 and 55 of its Rules of Procedure,
  - having regard to the report of the Committee on Civil Liberties, Justice and Home Affairs and the opinion of Committee on Legal Affairs (A7-0000/2010),
1. Adopts the position at first reading hereinafter set out;
  2. Instructs its President to forward its position to the Council, to the Commission as well as to the governments and the parliaments of the Member States.

### **Amendment 1**

#### **Draft directive**

##### **Recital 1**

###### *Text of the initiative*

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

###### *Amendment*

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 necessary approximation of***

*should* become the cornerstone of judicial cooperation in both civil and criminal matters within the European Union.

*legislation would facilitate cooperation and thus allow* the principle of mutual recognition *to* become the cornerstone of judicial cooperation in both civil and criminal matters within the European Union.

Or. en

### *Justification*

*Clarification of the Tampere conclusions.*

## **Amendment 2**

### **Draft directive Recital 5**

#### *Text of the initiative*

***(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.***

#### *Amendment*

***(5) Mutual recognition of decisions in criminal matters presupposes that Member States have trust in each other's criminal justice systems. It is however necessary to strengthen mutual trust. That trust requires adherence to the minimum standards set out in the*** European Convention for the Protection of Human Rights and Fundamental Freedoms (ECHR), ***in particular by ensuring a more consistent implementation of the rights and safeguards enshrined in Articles 5 and 6 of the ECHR. It also requires, through this Directive and other measures, further development of those standards within the European Union, including in the light of the Charter of Fundamental Rights of the European Union (the Charter). In the implementation of this Directive, Member States should not in any event fall short of the standards set out in the ECHR and the Charter as developed by the case-law of the European courts.***

Or. en

### *Justification*

*To achieve mutual trust, this Directive should both strengthen observance of ECHR standards and give 'EU added value' by building on them, in the light of the Charter of Fundamental Rights.*

### **Amendment 3**

#### **Draft directive Recital 8**

##### *Text of the initiative*

(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.**

##### *Amendment*

(8) **Respect for the rights to a fair trial and defence are enshrined in Articles 47 and 48 of the Charter.** The rights, **inter alia**, to interpretation and to translation for those who do not understand the language of the proceedings are enshrined in **Articles 5 and 6** of the ECHR, as **interpreted by** the case-law of the European Court of Human Rights. The provisions of this Directive facilitate the application of those rights in practice **in the context of criminal proceedings, including the pre-trial, sentencing and any appeal phases, until the final conclusion of the proceedings.**

Or. en

### *Justification*

*It is appropriate to cite the relevant provisions of the EU Charter as well as the ECHR, and to specify the extent of 'criminal proceedings'.*

### **Amendment 4**

#### **Draft directive Recital 10**

##### *Text of the initiative*

(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

##### *Amendment*

(10) The provisions of this Directive should ensure that the rights of the **suspect** who does not speak or understand the language of the proceedings to understand

proceedings to understand the *suspicious or* accusations brought against *him/her* and to understand the proceedings in order to be able to exercise *his/her* rights are protected by providing free and accurate linguistic assistance. *The suspected or accused person should be able, inter alia, to explain to his/her legal counsel his/her version of the events, point out any statements to which he/she disagrees and make his/her legal counsel aware of any facts that should be put forward in his/her 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 go below the standards provided by the ECHR, as interpreted in the case-law of the European Court of Human Rights.*

the accusations brought against *him* and to understand the proceedings in order to be able to exercise *his* rights are protected by providing free, *high-quality* and accurate linguistic assistance *with adequate time and facilities to safeguard the fairness of the proceedings. This assistance should cover communications between the suspect and his lawyer and written material necessary in order to ensure that he is able to understand the case against him and exercise his rights and to safeguard the fairness of the proceedings. It should also cover, where relevant, the rules of detention, including how to seek information and make complaints, and official contacts between the detaining authorities and the suspect.* 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.

Or. en

#### *Justification*

*The counterpart to amendments on articles including Article 1.*

#### **Amendment 5**

##### **Draft directive Recital 11**

###### *Text of the initiative*

*(11) Member States should not be obliged to ensure interpretation of communication between the suspected or accused person and his/her 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*

###### *Amendment*

*(11) The provisions of this Directive should in the shortest possible time be set within a comprehensive legal framework of procedural safeguards which should include: proper respect for the principle of the presumption of innocence; the right to equal treatment in the granting of bail; the right to legal advice and if necessary free legal assistance; the right*



*interpretation is clearly used for purposes other than exercising fair trial rights in the proceedings concerned.*

*to information about rights (Letter of Rights); the right to adduce evidence; the right to specific assistance for vulnerable suspects; the protection of juvenile suspects; the right to communicate with consular authorities and third parties; minimum standards for detention and accessible mechanisms of redress.*

Or. en

#### *Justification*

*The right to linguistic services in a particular case will be determined and subject to appeal according to the procedures laid down in this Directive. This Directive on rights to interpretation and translation is only the first legal instrument in the chosen step-by-step approach. It must be speedily followed other measures on fundamental procedural rights*

### **Amendment 6**

#### **Draft directive**

#### **Recital 12**

##### *Text of the initiative*

(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.***

##### *Amendment*

(12) The finding that there is no need for interpretation or translation should be subject to ***appeal.***

Or. en

#### *Justification*

*The right to an appeal gives stronger protection than ‘possibility of review’.*

## Amendment 7

### Draft directive Recital 12 a (new)

*Text of the initiative*

*Amendment*

***(12a) Member States shall ensure that training is offered for judges, prosecutors, lawyers, police and relevant court personnel in order for them to be able to assess the suspect's linguistic needs, ensure his ability to understand the proceedings, and assess the quality of interpretation and translation.***

Or. en

*Justification*

*A provision on training should be incorporated into the Directive. This new recital is the counterpart to the new article 5(2). The wording recognises that the training may well be provided by professional bodies.*

## Amendment 8

### Draft directive Recital 13

*Text of the initiative*

*Amendment*

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

(13) Appropriate assistance should be provided also to ***suspects*** suffering from ***physical or mental impairments which affect their ability to communicate effectively, such as*** hearing or speech impediments.

Or. en

*Justification*

*The counterpart to the amendment to article 2(5) on assistance in case of physical or mental impairment.*

## Amendment 9

### Draft directive Recital 14

#### *Text of the initiative*

(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 under this Directive, e.g. by paying attention to any potential vulnerability that affect their ability to follow the proceedings and make themselves understood and by taking appropriate steps to ensure these rights.***

#### *Amendment*

(14) The duty of care towards ***suspects unable to understand or follow the proceedings*** underpins a fair administration of justice. The prosecution, law enforcement and judicial authorities should therefore ensure that ***suspects in a potentially weak position*** are able to exercise effectively ***their rights. Those authorities should be aware of any potential vulnerability and take appropriate steps to ensure these rights. This should always be the case where a suspect is a minor or suffers from disabilities which impair his active participation in proceedings.***

Or. en

#### *Justification*

*The amendment is clearer.*

## Amendment 10

### Draft directive Recital 14 a (new)

#### *Text of the initiative*

#### *Amendment*

***(14a) This Directive should be evaluated in the light of the practical experience gained. If appropriate, it should be amended so as to improve the safeguards which it lays down.***

Or. en

*Justification*

*The counterpart to Amendment 39 on article 8.*

**Amendment 11**

**Draft directive  
Recital 15**

*Text of the initiative*

(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.***

*Amendment*

(15) ***The*** safeguarding of the fairness of the proceedings requires that ***written material necessary in order to ensure that the suspect is able to understand the case against him and exercise his rights should*** be translated. Some documents ***such as the decision depriving a person of his liberty, the charge/indictment, essential documentary evidence, any judgment, written legal advice from the suspect's lawyer and, where relevant, the rules of detention including how to seek information and make complaints,*** should always be considered ***necessary written material*** that should be translated.

Or. en

*Justification*

*The revised wording better ensures fair proceedings and leaves the scope of the obligation to translate to be determined in a particular case through the assessment and appeal procedures.*

**Amendment 12**

**Draft directive  
Recital 16**

*Text of the initiative*

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

*Amendment*

(16) ***Any*** waiver of the right to translation of ***written material*** should be ***subject to the requirements that the suspect has received legal advice and that the waiver was***

important public interest.

unequivocal, *was given in writing in the presence of his lawyer* and *does* not run counter to any important public interest.

Or. en

*Justification*

*The suspect should not be able to waive rights without strong safeguards.*

**Amendment 13**

**Draft directive  
Recital 18**

*Text of the initiative*

(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.

*Amendment*

(18) The provisions of this Directive **which** correspond to rights guaranteed by the ECHR **or by the Charter shall be interpreted and** implemented consistently with those **rights**, as **developed in** the relevant case-law of the European Court of Human Rights **and the Court of Justice of the European Union.**

Or. en

*Justification*

*This is the counterpart to Article 1(2b) new. There is a need for consistency with both the ECHR/ Strasbourg case-law and the EU Charter/ECJ case-law.*

**Amendment 14**

**Draft directive  
Article 1 – paragraph 1**

*Text of the initiative*

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

*Amendment*

1. This Directive lays down rules concerning the rights to interpretation and to translation in criminal proceedings **of every kind, including inter alia the pre-trial, sentencing, detention and any**

European Arrest Warrant.

*appeal phases, until the proceedings are finally concluded, and proceedings pursuant to a European Arrest Warrant.*

Or. en

*Justification*

*It is important that individuals have access to interpretation and translation during all phases of the criminal proceedings, until all appeals are exhausted.*

**Amendment 15**

**Draft directive**

**Article 1 – paragraph 1 a (new)**

*Text of the initiative*

*Amendment*

*1a. For the purpose of this Directive, the term "suspect" should be read as meaning a person suspected, arrested, prosecuted or convicted awaiting sentence in connection with a criminal offence, as long as the criminal proceedings to which the right to interpretation and translation applies have not been finally concluded.*

Or. en

*Justification*

*The Directive should apply to all phases of the criminal proceedings, including pre-trial, post-conviction sentencing and any appeal phase, and therefore the term "suspect" needs to be read accordingly.*

**Amendment 16**

**Draft directive**

**Article 1 – paragraph 2**

*Text of the initiative*

*Amendment*

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

2. Those rights apply to any person from the time that person is **questioned or arrested** by the authorities of a Member

*that he or she 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.*

*State in connection with a criminal offence or otherwise becomes aware that he is under suspicion until the final conclusion of the proceedings, including sentencing and the resolution of any appeal, and during detention to all official contacts between the detaining authorities and the detainee.*

Or. en

*Justification*

*The period during which the rights to interpretation and translation apply should as extensive as the interests of justice require.*

**Amendment 17**

**Draft directive**

**Article 1 – paragraph 2 a (new)**

*Text of the initiative*

*Amendment*

***2a. The suspect shall be informed of the rights laid down in this Directive without delay. This information shall be given in written form. Suspects with a visual impairment or reading disability should be notified orally, in a language which they understand, of these rights.***

Or. en

*Justification*

*The suspected person must know what rights he has to linguistic help and the information must be provided in written form so he can fully benefit from his rights. Special provision should also be made for persons with visual disabilities.*

## Amendment 18

### Draft directive

#### Article 1 – paragraph 2 b (new)

*Text of the initiative*

*Amendment*

***2b. The provisions of this Directive which correspond to rights guaranteed by the ECHR or by the Charter shall be interpreted and implemented consistently with those rights, as developed in the relevant case-law of the European Court of Human Rights and the Court of Justice of the European Union.***

Or. en

*Justification*

*This is the counterpart to the amendment to recital 18. There is a need for consistency with both the ECHR/ Strasbourg case-law and the EU Charter/ECJ case-law.*

## Amendment 19

### Draft directive

#### Article 1 – paragraph 3

*Text of the initiative*

*Amendment*

***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.***

***deleted***

Or. en

*Justification*

*The scope of the Directive should not be unduly narrowed.*



## Amendment 20

### Draft directive

#### Article 2 – paragraph 1

##### *Text of the initiative*

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.***

##### *Amendment*

1. Member States shall ensure that a ***suspect*** who does not understand or speak the language of the criminal proceedings concerned is provided ***without delay*** with interpretation ***necessary*** in order to ***ensure that he is able to understand the case against him and exercise his rights and to safeguard the fairness of the*** proceedings. Interpretation, including of communication between the ***suspect*** and his ***lawyer***, shall be provided ***throughout those*** proceedings. ***It shall also be provided in the case of detention for official contacts between the detaining authorities and the suspect.***

Or. en

##### *Justification*

*The right to interpretation needs to be sufficiently wide to ensure that the proceedings are fair.*

## Amendment 21

### Draft directive

#### Article 2 – paragraph 2

##### *Text of the initiative*

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

##### *Amendment*

2. ***The right to interpretation includes linguistic assistance to persons with physical or mental impairments.***

*Justification*

*The right to interpretation needs to be wider than just for people with a hearing impediment.*

**Amendment 22**

**Draft directive**

**Article 2 – paragraph 3**

*Text of the initiative*

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.

*Amendment*

3. Member States shall ensure that ***procedures are in place to ascertain whether the suspect*** understands and speaks the language of the criminal proceedings and needs the assistance of an interpreter.

*Justification*

*There needs to be a procedure for evaluation of the suspect's needs.*

**Amendment 23**

**Draft directive**

**Article 2 – paragraph 4**

*Text of the initiative*

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.***

*Amendment*

4. Member States shall ensure that ***there is a right of appeal to a judicial authority against a decision*** that there is no need for interpretation ***as well as a mechanism for complaints and an opportunity to secure a replacement interpreter.***

*Justification*

*It is necessary in the interests of justice to specify both a right of appeal rather than 'possibility of review', and that this is to a judicial authority. In addition, a complaints mechanism should be provided.*

**Amendment 24**

**Draft directive**

**Article 2 – paragraph 5 a (new)**

*Text of the initiative*

*Amendment*

***5a. Technology such as video links, telephone or internet access may be employed as a last resort when the personal attendance of an interpreter is impossible, such as when a requirement arises at very short notice, and where its use does not jeopardise the right to a fair trial. This option should not be used for proceedings taking place in court.***

Or. en

*Justification*

*Technological facilities should only be used if personal attendance of an interpreter is impossible, such as in an emergency situation or when rarer languages and dialects are involved and where the right to a fair trial is not prejudiced.*

**Amendment 25**

**Draft directive**

**Article 3 – paragraph 1**

*Text of the initiative*

*Amendment*

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***

1. Member States shall ensure that a ***suspect*** who does not understand the language of the proceedings concerned is provided ***promptly with translations of all written material necessary*** in order to ***ensure he is able to understand the case against him and exercise his rights and to safeguard the fairness of the criminal***

*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.*

proceedings.

Or. en

*Justification*

*An accused person needs to be able understand the essential documentary material at all stages of the proceedings in order to be able to mount a credible defence.*

**Amendment 26**

**Draft directive**

**Article 3 – paragraph 2**

*Text of the initiative*

*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.*

*Amendment*

*2. At least the decision depriving a person of his liberty, the charge/indictment, essential documentary evidence, any judgment, written legal advice from the suspect's lawyer, and where relevant the rules of detention, including how to seek information and make complaints, should be considered necessary written material requiring translation.*

Or. en

*Justification*

*Certain documents should be specified, through a non-exhaustive list, as falling within the meaning of written material necessary for the right of defence.*

## Amendment 27

### Draft directive

#### Article 3 – paragraph 3

##### *Text of the initiative*

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***.

##### *Amendment*

3. The ***suspect*** or his ***lawyer*** may submit a reasoned request for translation of further documents.

Or. en

## Amendment 28

### Draft directive

#### Article 3 – paragraph 3 a (new)

##### *Text of the initiative*

##### *Amendment*

***3a. An indexed and fully referenced summary of the prosecution evidence should be provided in translation well before the start of the trial, in order to enable the defendant to consider with his lawyer whether a formal request for a translation of any particular piece of prosecution evidence referred to in the summary should be made.***

Or. en

##### *Justification*

*This would enhance the practical implementation of the right to translation of essential material.*

## Amendment 29

### Draft directive

#### Article 3 – paragraph 4

##### *Text of the initiative*

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.***

##### *Amendment*

4. Member States shall ensure that ***there is a right of appeal to a judicial authority against a decision to refuse*** translation of any documents referred to in paragraphs 1 2, 3 and 3a, ***as well as a mechanism for making complaints.***

Or. en

##### *Justification*

*It is necessary to specify the availability of an appeal rather than ‘possibility of review’, and in the interests of justice, this must be a judicial authority. The scope of appealable refusal decisions should be widened and a complaints mechanism should be provided.*

## Amendment 30

### Draft directive

#### Article 3 – paragraph 6

##### *Text of the initiative*

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.

##### *Amendment*

6. Provided that this does not affect the fairness of the proceedings, an oral translation or an oral summary of the ***written material*** referred to in this Article may, ***by way of derogation in exceptional circumstances and subject to the appeal procedure in Article 3(4)***, be provided instead of a written translation, ***on condition that it is provided in the presence of the suspect’s lawyer and that a full and permanent record is kept of such oral translation or summary.***

*Justification*

*Oral summaries or translations should be exceptional and subject to safeguards including right of appeal.*

**Amendment 31****Draft directive****Article 3 – paragraph 7***Text of the initiative*

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

*Amendment*

7. A **suspect** who has a right under this Article to translation of **written material** may, at any time, waive this right **but only if he has received legal advice, if the waiver is unequivocal, if it was given in writing in the presence of his lawyer, and if it does not run counter to any important public interest.**

*Justification*

*The suspect should not be able to waive rights without strong safeguards.*

**Amendment 32****Draft directive****Article 5***Text of the initiative*

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 able to exercise his rights.

*Amendment*

**1.** Member States shall take concrete measures to ensure that the interpretation and translation provided shall be of **high** quality so that the **suspect** as well as a person subject to a European Arrest Warrant **request** is able to exercise his rights.

*Justification*

*The linguistic services need to be of high quality in order to ensure full exercise of rights.*

**Amendment 33**

**Draft directive**

**Article 5 – paragraph 1 a (new)**

*Text of the initiative*

*Amendment*

***1a. Member States shall ensure that training is offered for judges, prosecutors, lawyers, police and relevant court personnel in order for them to be able to assess the suspect's linguistic needs, to ensure his ability to understand the proceedings, and to assess the quality of interpretation and translation.***

Or. en

*Justification*

*A provision on training should be incorporated into the Directive. This clause is the counterpart to new recital 12a. The wording recognises that the training may be provided by professional bodies.*

**Amendment 34**

**Draft directive**

**Article 5 – paragraph 1 b (new)**

*Text of the initiative*

*Amendment*

***1b. In order to guarantee a high standard of interpretation and translation and efficient access to it, Member States shall ensure that a system of training, qualification and accreditation of translators and interpreters for legal work is in place, and that a national register of independent professional translators and interpreters who are so qualified is established and available to lawyers and relevant authorities, including on a cross-***



*border basis.*

Or. en

*Justification*

*Member States must take concrete steps to ensure that the services of professional interpreters and translators are available, with systems of training, qualification and registration of practitioners.*

**Amendment 35**

**Draft directive  
Article 5 a (new)**

*Text of the initiative*

*Amendment*

**Article 5a  
Deadlines**

***Any procedural deadlines shall take account of the time needed for translation and interpretation.***

Or. en

*Justification*

*Unless procedural deadlines take account of interpretation and translation requirements, the fairness of the proceedings could be prejudiced.*

**Amendment 36**

**Draft directive  
Article 5 b (new)**

*Text of the initiative*

*Amendment*

**Article 5b  
Recordings**

***Member States shall ensure that when interviews with the suspect have been conducted by police or prosecutors with the aid of an interpreter, or when an oral translation or oral summary of written***

*material is provided pursuant to Article 3(6) or when there is a waiver of rights pursuant to Article 3(7), an audio and a video recording are made which shall be provided to any party in the event of a dispute.*

Or. en

*Justification*

*It is vital in the case of appeals or disputes that the quality and reliability of the interpretation or oral translation, or sound basis of a waiver, can be checked through access to recordings.*

**Amendment 37**

**Draft directive**

**Article 7 – paragraph 1 – subparagraph 1**

*Text of the initiative*

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

\_\_\_\_\_  
\* OJ: Please insert a date **30 months** after the **publication** of this Directive **in the Official Journal**.

*Amendment*

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

\_\_\_\_\_  
\* OJ: Please insert a date **two years** after the **entry into force** of this Directive.

Or. en

*Justification*

*This is the normal timetable for transposition of Directives.*

**Amendment 38**

**Draft directive**

**Article 8**

*Text of the initiative*

The Commission shall, by .....\*, submit a report to the European Parliament and to the Council, assessing the extent to

PE439.397v01-00

*Amendment*

The Commission shall, by .....\*, submit a report to the European Parliament and to the Council, assessing the extent to

26/29

PR\807292EN.doc

which the Member States have taken the necessary measures in order to comply with this Directive, accompanied, if necessary, by legislative proposals.

---

\* OJ: Please insert a date *30 months* after the *publication* of this Directive *in the Official Journal*.

which the Member States have taken the necessary measures in order to comply with this Directive, accompanied, if necessary, by legislative proposals *to improve the safeguards for fair proceedings which it provides*.

---

\* OJ: Please insert a date *three years* after the *entry into force* of this Directive.

Or. en

## EXPLANATORY STATEMENT

In 2004 the Commission made a proposal for a Council Directive on procedural rights in criminal proceedings throughout the EU (COM (2004) 348), covering a reasonably wide set of matters. The Parliament strongly supported the proposal, agreeing with the Commission that trust between Member States in the field of judicial cooperation would be greatly enhanced by harmonised rights for individuals in investigations and judicial proceedings.

However negotiation in the Council on this wide measure was abandoned in 2007 due to the failure of Member States to reach agreement. The Swedish Presidency in the second half of 2009 revived efforts in the form of an overall 'Roadmap' (OJ C 295, 4.12.2009, p1) for strengthening procedural rights of suspected and accused persons in criminal proceedings, which outlined a step-by-step approach rather than a single comprehensive measure.

The European Council welcomed the adoption by the Council of the Roadmap, of which the 5 measures envisaged are those within the scope of the 2004 proposal: rights to translation and interpretation; the right to information on rights and about the charges (a 'Letter of Rights'); the right to legal advice and legal aid; communication with consular authorities and third parties such as employers, family or friends; and the right of vulnerable defendants to specific support and safeguards. In addition, a Green paper on pre-trial detention is foreseen.

In the Stockholm Programme the European Council invited the Commission to put forward the proposals foreseen in the Roadmap for its swift implementation, to examine further elements of minimum procedural rights for accused and suspect persons, and to assess whether other issues for instance the presumption of innocence needs to be addressed, to promote better cooperation in this area.

In July 2009 the Commission proposed as the first Roadmap measure a Council framework decision (COM(2009)338) devoted exclusively to the right to interpretation and to translation in criminal proceedings. The European Parliament was consulted and a draft report was produced by the present rapporteur (2009/0101 – PR/793491 – PE 430.359v01-00), but this was not progressed due to the coming into force of the Lisbon treaty. In a regrettably minimalist approach to democratic engagement, the European Parliament was consulted neither on the Roadmap nor on the Resolution concerning practical implementation of the language rights Framework Decision.

For practical reasons, the Commission was not in a position in December 2009 to make an early proposal for a Directive on language rights and thus this was done by a group of Member States (PE-CONS 1/10), with the content reflecting the agreement of the 27 governments in October 2009 on the framework decision in the context of the then unanimity requirement.

### *Position of the rapporteur*

EU criminal and judicial cooperation is developing in an unbalanced way, with more priority being given to the needs of prosecution and law enforcement than to the rights of the defence, and the lack of firm procedural safeguards for individuals subjected to judicial systems they

may poorly understand is a gap that must not be allowed to continue.

Thus the renewed impulse for procedural rights is welcome and although the step-by-step approach is second-best, it is better than no action at all so it is essential that the momentum is kept up. Not only must the Roadmap be completed but also further confidence-building and rights-enhancing measures must be effected in the near future: the right of foreign defendants to be considered for grant of bail on a non-discriminatory basis is an urgent priority. All the Roadmap proposals should be brought forward as soon as possible since procedural rights are closely inter-linked. For instance the right to effective translation and interpretation can be undermined by insufficient information about rights or the unavailability of prompt or free legal advice. Any extra costs that the Directive will impose on Member States are the irreducible cost of ensuring fair trials and avoiding miscarriages of justice and will in any case be balanced by fewer costly appeals and delays. Any Resolution on best practice which might be adopted to accompany the Directive should include strong practical measures which will strengthen implementation of the rights laid down in the Directive.

Adherence to the standards set out in the European Convention of Human Rights (ECHR) must form the basis for the mutual trust upon which EU mutual recognition in judicial matters is contingent and represent the minimum standards below which no EU state must fall. The rights in this Directive are thus based on Articles 5 (on the right to liberty and security) and Article 6 (on the right to a fair trial) of the Convention. Although there are situations to which Article 5 applies to which this EU measure does not, e.g. mental health detention, it is appropriate to cite it. Article 5 gives the right not to be detained except in accordance with ‘a procedure prescribed by the law’ and therefore its scope is wider than what takes place in court; this is reflected in the application of this Directive to pre-trial questioning.

Since the EU is aiming to establish a single area of justice, with common rules and intensive cooperation, the Directive and other measures to follow must not only respect the ECHR but also build on it in accordance with the EU Charter of Fundamental Rights, in order to set EU standards for protection of suspects and defendants at a higher level.

This report amends the Member State proposal in several ways, including:

- reference to the EU Charter of Fundamental Rights as well as the ECHR
- applicability of the rights to be triggered not only by questioning or arrest but also through awareness of suspicion without the suspect having to be informed by the authorities;
- extension of the rights to cover all phases of proceedings including sentencing, appeals and detention until criminal proceedings are finally concluded;
- specifying that the suspect should be made aware in writing of his rights,
- support for persons to compensate for a lack of linguistic skills to extend to all those with physical or mental impairments
- interpretation of suspect-lawyer communications and translation of legal advice;
- written materials translated to include all the essential documents of the case
- appeals to be to a judicial authority and a mechanism for complaints set up
- adding provisions on training, and on qualification and registration of interpreters and translators
- addition of further safeguards: on recording, adequate time and facilities, and procedural deadlines to take account of interpretation and translation needs.