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THE EUROPEAN UNION**

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**DROIPEN 117
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NOTE

from : Presidency
to : Coreper

No Prev Doc : 13729/09 DROIPEN 107 COPEN 182
13730/09 DROIPEN 108 COPEN 183
13792/09 DROIPEN 110 COPEN 184

Subject: 1. Draft Resolution of the Council on a roadmap for strengthening procedural rights of suspected or accused persons in criminal proceedings
2. Proposal for a Council Framework Decision on the right to interpretation and to translation in criminal proceedings
3. Proposal for a Resolution of the Council and 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
- Note from the Presidency further to discussions in CATS on 7.10.2009

On 7 October 2009, the Article 36 Committee (CATS) examined the above three documents with a view to preparing discussions in Coreper. CATS was able to solve a substantial number of outstanding issues.

The modifications made to the texts, as well as the remaining outstanding issues which are submitted to Coreper for consideration, are the following:

ROADMAP (ref: 13792/09):

Modifications made:

1. In recital 12, the words ', *in due course*,' have been deleted.
2. Apart from DE, FR, IE and UK, NL also has a Parliamentary scrutiny reservation on this document.
3. All footnotes relating to positions of Member States have been deleted.

Remaining outstanding issue:

CZ has a scrutiny reservation on the title of measure F, relating to a "Green Paper on pre-trial detention".

FRAMEWORK DECISION (ref: 13729/09):

Modifications made / Remaining outstanding issues:

Reference is made to the text reproduced in Annex 1.

The outstanding issues relate notably to:

- 1) page 8, footnote 1: CY, IT, NL, SI and UK scrutiny reservations on the new recital 13a, concerning "consistent implementation with the ECHR and its case-law";
- 2) page 9, footnotes 1 and 2: suggestion by FI, supported by PL/UK, to move text from the recitals into the operative part of Article 1 on "scope"; DE and HU scrutiny reservations;
- 3) page 10, footnote 2: BE, PL, SI and FI scrutiny reservations on new text in Article 2(1) on the "right to interpretation", in particular of communication with lawyers;
- 4) page 11, footnote 1: CY reservation on Article 3 relating to "translation".

RESOLUTION (ref: 13730/09):

Modifications made / Remaining outstanding issues:

Reference is made to the text reproduced in Annex 2.

The outstanding issues relate notably to:

- 1) page 15, footnote 1: suggestion by FI for an addition to the second whereas-clause, relating to "respect of national budgetary procedures";
- 2) page 17, footnote 1: NL and IE/LV reservations on the point on "training";
- 3) page 18, footnote 1: AT reservation on the "status of the interpreter's or translator's qualifications";
- 4) page 18, footnote 3: alternative text by FI for point 14 on the relationship with the E-justice action plan.

Coreper is invited to solve the above mentioned remaining outstanding issues with a view to allowing the JHA Council on 23 October 2009 to reach a general approach on the three texts.

COUNCIL FRAMEWORK DECISION
on the right to interpretation and to translation in criminal proceedings

THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty on European Union, and in particular Articles 31(1)(c) and 34(2)(b) thereof,

Having regard to the proposal from the Commission,

Having regard to the opinion of the European Parliament,

Whereas: ¹

- (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 in criminal matters². 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".

¹ The recitals have not yet all been discussed.

² OJ C 12, 15.1.2001, p. 10.

- (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" ¹ 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 these rules are correctly applied" ².
- (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.
- (6) Article 31(1) of the Treaty on European Union provides for "ensuring compatibility in rules applicable in the Member States as may be necessary to improve [judicial co-operation in criminal matters]". Common minimum standards 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.
- (7) Such common standards should be applied in the fields of interpretation and translation in criminal proceedings. In order to enhance the necessary confidence among Member States, this Framework Decision provides for basic common standards with regard to interpretation and translation in criminal proceedings in the European Union which reflect the traditions of the Member States in applying the relevant provisions of the ECHR.

¹ OJ C 12, 15.1.2001, p. 10.

² COM(2000) 495, 26.7.2000, p. 4.

(8) The right to interpretation and translation for those who do not understand the language of the proceedings are enshrined in Article 6 of the ECHR, as interpreted by the case law of the European Court of Human Rights. The provisions of this Framework Decision facilitate the application of those rights in practice.

(8 bis) This Framework Decision does not apply to proceedings which may lead to sanctions being imposed by an authority other than a criminal court.

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

(8 quater) (...) ¹

(9) The provisions of this Framework Decision should ensure that the rights of the suspected or accused person who does not speak and understand the language of the proceedings to understand the 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. This assistance should be extended, if necessary, to relations between the suspect and his legal counsel in direct connection with the suspected or accused person's participation in the proceedings. This right aims at enabling the suspected or accused person to participate effectively in the proceedings. The suspected or accused person should be able, *inter alia*, to explain 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.

¹ This recital was deleted since the substance was moved into Article 1(2).

(9bis) 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.

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

(11) 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 Framework Decision, 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.

(11bis) The safeguard of the fairness of the proceedings requires that essential documents, or at least the important passages of such documents, should 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/her liberty, the charge/indictment and any judgment.

(12) (...)

(12a) 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.

- (13) This Framework Decision respects the fundamental rights and observes the principles recognised by the Charter of Fundamental Rights of the European Union. In particular, this Framework Decision seeks to promote the right to liberty, the right to a fair trial and the rights of the defence.
- (13a) Member States should ensure that the provisions of Articles 2 to 5 of this Framework Decision which correspond to rights guaranteed by the ECHR are implemented consistently with those of the ECHR and as developed by the relevant case-law of the European Court of Human Rights.¹
- (14) Since the aim of achieving common minimum standards cannot be achieved by Member States acting unilaterally and can only be achieved at Union level, the Council may adopt measures in accordance with the principle of subsidiarity as referred to in Article 2 of the Treaty on European Union and defined in Article 5 of the Treaty establishing the European Community. In accordance with the principle of proportionality, as set out in the latter Article, this Framework Decision does not go beyond what is necessary in order to achieve that objective,

HAS ADOPTED THIS FRAMEWORK DECISION:

¹ CY, IT, NL, SI and UK have a scrutiny reservation on this new recital, which was inserted further to a suggestion by UK for a new Article 6a. In this connection, SI suggested submitting the text as it results from the discussions in the Council bodies to the Secretariat of the Council of Europe, in order to verify whether this text is in conformity with the ECHR, as interpreted by the European Court of Human Rights ("Strasbourg-proof").

Article 1
Scope^{1 2}

1. This Framework Decision lays down rules concerning the rights to interpretation and 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 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.

¹ FI, supported by PL and UK, suggests moving the text of recital 8bis into the wording of this Article. Some other Member States expressed doubts on this suggestion.

² DE and HU have a scrutiny reservation on Article 1.

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 in his/her mother tongue or in another language that he/she understands, in order to safeguard his/her rights to fair proceedings. Interpretation, including of communication between the suspected or accused person and his/her legal counsel, [when the legal counsel is present in accordance with national law, ¹] shall be provided during the criminal proceedings before investigative and judicial authorities, including during police questioning, during all court hearings and during any necessary interim hearings. ²
- 1a. Member States shall ensure that a person with a hearing impediment receives interpretation assistance, if appropriate for that person.
2. (...)
3. Member States shall ensure that it is verified in any appropriate manner, including by consulting the suspected or accused person, whether he/she understands and speaks the language of the criminal proceedings and needs the assistance of an interpreter.
4. Member States shall ensure that at a 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.

¹ The text between brackets was inserted further to a suggestion by FR.

² BE, PL, SI and FI have a scrutiny reservation on the new text in Article 1, which was inserted further to a suggestion by NL in order to accommodate concerns by other delegations on the text in former paragraph 2 (which has now been deleted).

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 3¹

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 proceedings concerned is provided with a translation, into his/her mother tongue or into another language that he/she understands, of all documents which are essential in order to safeguard his/her rights 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/her liberty, the charge/indictment and any judgment, where such documents exist.
3. The suspected or accused person, or his/her lawyer, may submit a reasoned request for translation of further documents which are necessary for the effective exercise of the right of defence.

¹ CY has a reservation on this Article, which it might be able to lift if the delay for implementation of the instrument is raised from 24 to 30 months (see Article 7).

4. Member States shall ensure that at a 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 or her rights.

Article 6

Non-regression clause

Nothing in this Framework Decision 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 Framework Decision by at the latest ¹.

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 Framework Decision.

¹ 24 months after publication of this Framework Decision in the *Official Journal*.

Article 8

Report

The Commission shall, by¹, 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 Framework Decision, accompanied, if necessary, by legislative proposals.

Article 9

Entry into force

This Framework Decision 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 Council

The President

¹ 36 months after publication of this Framework Decision in the *Official Journal*.

Draft
Resolution of the Council and 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

THE COUNCIL OF THE EUROPEAN UNION AND THE GOVERNMENTS OF THE
MEMBER STATES MEETING WITHIN THE COUNCIL,

Whereas:

Council Framework Decision 2009/XXX/JHA on the right to interpretation and to translation in criminal proceedings sets out certain requirements regarding the rights, for persons suspected or accused of a criminal offence and for persons subject to proceedings for the execution of a (...) European Arrest Warrant, who do not understand or speak the language of the proceedings, to be assisted by an interpreter and to receive translations of essential documents.

¹Guidelines should be given to Member States with a view to promoting the effective implementation of these rights,

HAVE ADOPTED THIS RESOLUTION:

¹ FI suggested starting this whereas clause with the following words: "*While fully respecting the national budgetary procedures, guidelines*"

Scope and objectives

- (1) This Resolution aims to foster the rights set out in Framework Decision 2009/XXX/JHA on the right to interpretation and to translation in criminal proceedings.
- (2 - ex 3) Building further on the principles laid down in the European Convention for the Protection of Human Rights and Fundamental Freedoms, Member States, while ensuring implementation of Framework Decision 2009/XXX/JHA, are encouraged to promote actively the measures set out below.
- (3 - ex 4) The aim of the measures taken should be to develop suitable, effective practice in the Member States for interpretation and translation in the course of criminal proceedings. The measures set out below also apply to interpretation and translation provided by the executing Member State in proceedings for the execution of a European Arrest Warrant.

Measures

Representation of professionals

- (4 -ex 5) Representatives of the interpreters' and translators' professions should be invited to be involved, where appropriate, in the practical implementation of the measures set out below, as well as in achieving the objectives of this Resolution.

Qualification

- (5 - ex 6) Member States should strive for a high level of qualification for interpreters and translators employed in criminal proceedings for the purpose of having an adequate standard of interpretation and translation in order to ensure the fairness of proceedings. In addition to general language skills, these translators and interpreters should have specialist knowledge of legal terminology.
- (6) Interpreters and translators should be encouraged to develop their professional skills through continuous training and professional development.

- (7) The qualification of interpreters and translators employed in criminal proceedings should be verified by a formal degree or any similar proof of proficiency, for example through accreditation or certification, in the language concerned.
- (8) Member States should strive for a high level of qualification for interpreters assisting suspected or accused persons with a hearing impediment.
- (9) It should be verified that interpreters and translators employed in criminal proceedings are persons of integrity.

Training

- (10 - ex 9a) Member States should encourage 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.

(9b) (...) ¹

Registration

- (11 - ex 10) Member States should ensure that there is a national register, or registers, of qualified interpreters and translators to be employed in criminal proceedings.

¹ In view of concerns raised by some Member States on the advisability of this point, the Presidency suggested deleting paragraph 9b and maintaining paragraph 9a. In the view of the Presidency, it is advisable to keep some language on training in view also of the recommendations to this end by the Council of Europe.
NL has a reservation because it regrets the deletion of paragraph 9b; IE and LV have a reservation because they also want paragraph 9a to be deleted.
To be noted that the term "judges, prosecutors and judicial staff" is taken from the Resolution on training for judges, prosecutors and judicial staff adopted by the Council and the Representatives of the Member States meeting within the Council in October 2008 (OJ C 299, 22.11.2008, page 1).

(12 - ex 11) The register or registers should be kept up to date so as to reflect, *inter alia*, the status of the interpreter's or translator's qualifications. ¹

(13) Member States are encouraged to make their national registers accessible to competent authorities of other Member States.

(14) In this context, particular attention should be paid to the aim of facilitating the interconnection of databases for legal translators and interpreters, as envisaged in the European e-Justice action plan of 27 November 2008 ^{2, 3}

Engagement of registered interpreters and translators

(15) Member States should ensure that, insofar as possible, only registered interpreters and translators are employed in criminal proceedings. The services of a non-registered interpreter or translator should be used only if it is not reasonably possible to employ a registered interpreter or translator. In such cases, the competent authorities should pay particular attention to the quality of the interpretation or translation.

Remote access to interpretation

(16 - ex 17) In situations where it is appropriate, distance interpretation could be provided, for example by using multiple-party telephone calls or videoconferencing facilities.

Codes of Conduct and Guidelines on Best Practice

(17 - ex 20) The adoption of Codes of Conduct, as well as Guidelines on Best Practice, for interpreters and translators, should be encouraged. These should include provisions on, *inter alia*, professional integrity and confidentiality.

¹ AT has a reservation on the "status of the interpreter's or translator's qualifications".

² 15315/08 JURINFO 71 JAI 612 JUSTCIV 239 COPEN 216.

³ At CATS on 7 October 2009, FI expressed concerns on points 11-14 and suggested the following alternative text for this point: "*The interconnection of databases for legal translators and interpreters should be facilitated by development of E-justice as envisaged in the European E-justice action plan of 27 November 2008.*"

(18 - ex 21) In order to ensure that the quality of the service provided in criminal proceedings by interpreters and translators keeps on improving, Member States should regularly exchange information about experiences and practices in this field. The Commission is invited to organise regular consultations among Member States and representatives of the professional bodies engaged in interpretation and translation, in order to facilitate the exchange of experiences outlined above.
