

**STATE OF PLAY AFTER THE 1ST TRILOGUE ON 5/4/2011 IN  
STRASBOURG**

drafted by the LIBE Secretariat

<b>Draft Report on the Proposal for a DIRECTIVE OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL on the right to information in criminal proceedings</b>
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**List of Participants at the 1st trilogue:**

***Council:***

HU Presidency: Peter Csonka  
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Zsombor Nagy  
Zsofia Eler

General Secretariat: Luca De Matteis

***European Commission:***

General Secretariat: William Flويد

DG JUST: Lotte Knudsen  
Mauro Miranda  
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Caroline Morgan

***European Parliament:***

*Members:* Birgit Sippel Rapporteur (S&D)  
Elena Oana Antonescu Shadow (EPP)  
Sarah Ludford Shadow (ALDE)

*Assistants to Members:*

Sarah Sy (assistant to MEP Sippel)  
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Emily Tullberg (assistant to MEP Ludford)  
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*Political advisors:*

SD: Fabrizia Panzetti  
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## **Introduction**

The 1st trilogue was chaired by the rapporteur Birgit Sippel. It started at 4.10 pm and ended at 6.40 pm.

The discussion was based on a consolidated table provided by the CNS in view the trilogue.

The meeting proceeded on the basis of '*nothing agreed until everything agreed*' and all points on which a provisional consensus was reached are subject to the agreement of the respective institutions.

Articles 1 to 5 were discussed.

At the beginning of the discussion the Rapporteur stated that Article 11 as drafted in the Commission proposal (correlation table) is a red line for the Parliament and that no legislative instrument missing such a provision would be accepted for the vote in Plenary. CNS stated disagreement on the insertion of a reference to correlation tables.

## **Article 1**

*Article 1.1:*

- ***charge/accusation***: CNS accepts to replace the wording ***charge*** with ***accusation*** throughout the text, as proposed by the EP

- addition of "***and proceedings for the execution of a European Arrest Warrant***" in Article 1.1: EP flexible on inserting such wording in Article 1.1., as asked by CNS. In this case Article 2.2 should be deleted.

→ addition is in line with Interpretation and Translation Directive: In order to provide coherence of the approach followed in different instruments of the Roadmap, EP could accept as a compromise a reference to the European Arrest Warrant in Article 1.

- ***procedural*** rights: CNS would like to add a reference to procedural as the Road Map refers to procedural rights and all rights dealt with in the draft Directive are procedural. In addition it would better fit with Article 82 TFEU.

- EP does not agree as this would limit the scope and would not cover rights such as the right to medical care.

- COM stresses that Article 82 refers to "rights of individuals in criminal procedure" and not to procedural rights.

- The EP Legal service, asked for an advice, said it would send explanation by e.mail.

Article 1.2:

**(2) The Directive applies to suspected and accused persons on Union territory regardless of their legal status, citizenship or nationality.**

- CNS against Article 1.2 as proposed by EP, as it duplicates Art. 21 of the Charter of Fundamental Rights on non-discrimination.
- COM says that there is no need for such a provision and consistency should lead not to insert it, as no similar provision is in the Interpretation/translation Directive.

## **Article 2**

Article 2.1:

- **Gender issue:** general agreement that it is something to be dealt with by jurist linguists.

- **as established by national law:** this wording has been inserted by CNS throughout the whole text as an expression of the principle of subsidiarity. EP is against.

- Limitation not contained in measure A on Interpretation and Translation: "*person is made aware by the competent authorities of a Member State, by official notification or otherwise, that he is suspected or accused of having committed a criminal offence until the conclusion of the proceedings...*".

- EP insists on a wider scope as in EP mandate and COM proposal.

Article 2.2a:

- **definition of child:** CNS against the insertion of definitions and references not strictly linked to the scope of the Directive. This should be dealt with in the measure on vulnerable people.

- EP stresses that the addition is harmless and that the same provision was inserted in the THB Directive and in the sexual exploitation draft Directive.

- COM is not favourable and questions the added value.

- (A fallback compromise could be to have the definition in recital 24 containing the definition of a child:

***In accordance with the United Nations Convention on the Rights of the Child, a child means every person below the age of 18 years. In all action relating to children, the child's best interests must be a primary consideration (Recital 24.)***

Article 2.3/2.2b:

- **minor offences:** EP and CNS added the same provision.

## **Article 3**

Article 3.1:

- ***promptly***: according to CNS it is redundant. EP insists. COM supports EP.
- ***at the point when those rights become applicable*** (EP Article 3.1/CNS Article 3.1a): was inserted both by CNS and EP, but different interpretation CNS and COM.
- ***orally or in writing***: CNS flexible
- ***as they apply under their national law***: CNS wants this reference and says it is a red line. EP against. COM states that in principle it is not favourable of references to national law but in this case it might be acceptable.

*Article 3.2:*

- ***right to access to a lawyer/entitlement to legal advice***: CNS and COM both include the formulation "access to a lawyer", as the right of access to a lawyer will be the object of measure C of the roadmap. CSL stresses that there is the principle that you have a lawyer and secondly, under which conditions you get a lawyer free of charge. COM prefers CNS structure and suggests using the term legal aid, which will be used later in the roadmap. EP is flexible on wording used by CNS. EP could evaluate whether to accept the reintroduction of "access to a lawyer"
- ***right to be informed of the accusation***: CNS says it is redundant. EP insists on having it in Article 3 stressing that one thing is the right of being informed of the accusation, as stated in Article 6, and another thing is the right of being aware of the right to be informed of the accusation. COM supports EP. EP suggests trying to change the wording.
- the ***right to remain silent***: CNS says it would be better to insert the reference to national law at the beginning of the Paragraph, as it proposes. COM states that in principle it is not favourable of references to national law but in this case it might be acceptable.

*Article 3.1a EP + 3.1b EP:*

information given to persons who ***cannot understand*** the language, children, illiterate/disabled persons/blind people: CNS against as it is contrary to references to other legal instruments or to matters that will be dealt with in other measures of the Roadmap. COM: no strong feeling on that but supports the concept of "conveying the information". EP says it will come with new wording.

*Article 3.1c EP:*

- ***recording***: CNS suggests dealing with the matter under Article 8. EP flexible provided that the content of its Article 3.1c is not diluted.

**Article 4**

*Title:*

**arrest/deprivation of liberty:** CNS sticks to arrest as in its view deprivation of liberty could cover also victims and witnesses. COM suggests "persons suspected or accused deprived of liberty"

*Article 4.1:*

- reference to **Article 3.1** and not to the whole Directive: CNS flexible in view of deletion.

- **save for exceptional circumstances:** CNS insists to keep it. EP strongly against. CNS cannot provide real justification. COM supports EP.

- **upon questioning at the police station:** CNS will come back with new wording.

*Article 4.2:*

- **Letter of rights:** CNS does not like the reference to the Letter of rights. EP flexible provided that it is stated that the information has to be given in written form.

- list of rights: CNS strongly against the right to c) medical care, d) bail, f) challenge the arrest and g) maximum period of pre-trial detention. Flexible on e) how long somebody can be deprived of liberty before being brought in front of a judge. With regard to b), CNS could accept only the reference to consular authority. COM says the more rights are mentioned, the better it is and stresses that despite the fact that the right to silence is not in the Roadmap, CNS has no problem in inserting it in the Directive. COM also reminds that the right to medical care is strictly linked to ill treatment and torture. COM says that the use of the term "bail" is unfortunate as it refers to US law, but the notion would be correct and therefore d) could be rephrased.

*Article 4.3:* no problem

*Article 4.3: In exceptional cases, including:* EP flexible on deletion asked by CNS.

*Article 4.3:* CSN against references to measures contained in other legal instruments stressing that it cannot be based on Article 82 TFEU because it refers to the **quality** of the translation and interpretation. EP insists on keeping it. COM does not support EP.

### **Article 5:**

- **who is arrested for the purpose of:** COM supports CNS. EP flexible

- EP strongly against limitation of the scope (**Articles 11, 13.2 and 14 of the EAW FD**), as requested by CNS. COM supports EP, as the rights apply to all people and one should not select. CNS will come back with information to clarify the issue.

### **Concluding remarks:**

The next trilogue is on 18 April 2011 from 3 to 6.30 p.m. in meeting room A1G-1.