



Brussels, 29 June 2010

### **Open letter to European Commissioner for Justice Viviane Reding**

Our organisations have advocated the need for legislative action at European Union level on defence rights since the European arrest warrant was proposed. We have steadfastly supported the efforts of the Commission in that direction through the proposal for a framework decision on certain procedural safeguards in criminal proceedings, through the Swedish roadmap, and to the adoption of Measure A on interpretation and translation.

It remains an imperative that if the European Union is to continue to promote mutual recognition in the area of criminal matters, a set of standard defence rights must be enacted. We are therefore concerned about the delay in presenting Measure B on Information on Rights and Information about the Charges. We urge the Commission to present the proposed Directive as soon as possible in order for work to commence towards its adoption.

On the 24<sup>th</sup> and 25<sup>th</sup> June 2010, JUSTICE, Open Society Justice Initiative, University of Maastricht and University of West of England held a conference titled 'Effective Criminal Defence in Europe: Advancing beyond Stockholm' to present the findings of a three year study on how defence rights actually work in practice in eight member states and one accession state. The study is an extensive empirical resource. The research findings not only confirm that member states are failing to provide safeguards to the standard of the European Convention on Human Rights and developing jurisprudence, but that where legislation purports to comply, there are significant problems with implementation, training and resources to ensure these rights are provided for in practice.

The conference was attended by experts and ministry of justice representatives from the majority of EU member states. In light of the research findings and the productive approach to Measure A on interpretation and translation, the conference unequivocally called continued for momentum towards the implementation of the roadmap.

We were particularly grateful to Commissioner Reding for her address to the conference, which provided welcome recognition of the importance of the research and findings:

*"We will only have mutual trust in Europe once each and every member state has earned that trust by showing its criminal justice system guarantees fair trials ...procedural standards...are a crucial building block of the mutual trust between legal systems. On this trust will fair European criminal justice be built."*

We are encouraged by the clarified basis for work in the area of procedural safeguards under article 82(2) TFEU which allows for minimum standards to be legislated in support of mutual recognition instruments. Equally, given that neither the Stockholm Programme nor the Roadmap mention a restriction in the scope of the measures, we consider that the question of limitation to cross border

cases has been settled. Notwithstanding, we observe that any future measure must be adopted in accordance with the fundamental values of the European Union, taking account of the Charter of Fundamental Rights and the ECHR. No differential treatment between citizens of the EU, on account of the limitation of procedural safeguards to cross border cases, could be entertained in the post Lisbon Treaty era, and the European Court of Justice would be quick to require the protection of all EU citizens were such discrimination to be legislated.

It is against this background that we express our dismay in learning that Measure B on Information on Rights and Information about the Charges will not be presented as indicated and does not feature on the agenda of proposals as expected. Urgent steps are required to harmonise the manner in which suspects or defendants are informed about their basic rights. In every case, they should be told of the nature and cause of the accusation against them, and this right to information should also include access to the file. It is axiomatic that if persons are not properly informed about their rights they are far less likely to be able effectively to vindicate them. Such an outcome directly undermines the interests of justice, by calling into question the fairness and reliability of criminal proceedings resulting in convictions.

We call for the proposal to be presented as soon as possible in order for work to commence towards its adoption, and we commend the publication *Effective Criminal Defence in Europe* (Intersentia, 2010) and the executive summary<sup>1</sup> to all those who may not yet be certain of the evidential basis for this vital work.

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<sup>1</sup> Available from  
[http://www.soros.org/initiatives/justice/focus/criminal\\_justice/articles\\_publications/publications/criminal-defence-europe-20100623/criminal-defence-europe-summary.pdf](http://www.soros.org/initiatives/justice/focus/criminal_justice/articles_publications/publications/criminal-defence-europe-20100623/criminal-defence-europe-summary.pdf)