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Procedural Safeguards – The Road Map – The Commission’s proposal – the next steps

Caroline Morgan
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- The Commission has long considered that the EU needs to have common minimum standards of procedural safeguards in criminal proceedings.
- It is important for the EU to get the balance right between measures that facilitate investigation and prosecution of crime and those that protect the rights of the accused. The EU needs a common approach to, *inter alia*, the rights set out in the ECHR. Additionally, in the context of mutual recognition, there is a need for measures promoting mutual trust, such EU legislation on procedural rights.
- The Commission originally proposed a draft Framework Decision which covered five basic rights in 2004. After 3 years of discussion and debate in Council, a German Presidency text was put to the June 2007 Justice Council but 6 Member States announced that they would not support it. Nonetheless there is a high level of support for this in many Member States and the EP.
- The need for a measure setting common minimum standards of fair trial rights throughout the EU confirmed in the ULB report on mutual recognition (Vernimmen study, 20/11/2008) in which it is clear that most of the experts and practitioners interviewed stated that mutual recognition could not function optimally without a higher level of trust and such trust can only be achieved if common standards are in place.
- The Swedish Presidency has made this a justice priority.
- In early July 2009, it presented a draft Roadmap instructing the Commission to put forward proposals on a "step by step" basis, on:

-(1) Measure A: the right to interpretation and translation,

-(2) Measure B: the right to information about rights, (Letter of Rights)

-(3) Measure C: legal advice, before trial and at trial,

- (4) Measure D: the right for a detained person to communicate with family members, employers and consular authorities, and
- (5) Measure E: protection for vulnerable suspects.
- The Commission is also asked to put forward a Green Paper on pre-trial detention. As part one of this Roadmap (still to be adopted), on 8 July 2009, the Commission presented a proposal for a Framework Decision on the right to interpretation and translation. The Swedish Presidency has put forward a draft Resolution containing recommendations for best practice.
- The Commission and the Swedish Presidency agree that the best approach is to combine legislation with best practice.
- Experience shows that there is a wide discrepancy in provision between Member States (Maastricht/Ghent study).
- It is better to have basic requirements in a Framework Decision (and soon Directive, with enforcement mechanisms) and best practice on an optional basis in separate recommendations.
- This way we can have the benefit of good examples from those Member States that provide the best protection of rights.

The way forward

- Agreement should be reached soon on the Framework Decision on interpretation and translation (Measure A), the Roadmap and the Resolution on best practice (Signe Ohman's presentation).
- The Commission will soon be preparing Measure B on the right to information about rights, (Letter of Rights). The Commission will also look into including a right to information about the case-file.

Caroline Morgan

Criminal Justice Unit

Caroline.morgan@ec.europa.eu

Tel: +32-2-296-0067