



**COUNCIL OF  
THE EUROPEAN UNION**

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**NOTE**

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from : Presidency  
to : Delegations

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Subject : Draft Resolution of the Council on a roadmap for strengthening procedural rights  
of suspected or accused persons in criminal proceedings

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The Friends of the Presidency on 29/30 July 2009 examined 12141/09 DROIPEN 69 COPEN 142, containing a revised version of the above draft Resolution.

Further to the meeting, the Presidency refined the text in view of the helpful comments made by delegations.

The refined text is set out in the Annex. The latest modifications have been underlined.

Draft

**Resolution of the Council on a roadmap for strengthening procedural rights of  
suspected or accused persons in criminal proceedings**

The Council of the European Union,

Whereas:

- (1) In the European Union, the Convention for the Protection of Human Rights and Fundamental Freedoms (the "Convention") constitutes the common basis for the protection of the rights of suspected or accused persons in criminal proceedings, which for the purposes of this Resolution includes the pre-trial and the trial stage.
- (2) Furthermore, the Convention, as interpreted by the European Court of Human Rights, is an important foundation for Member States to have trust in each other's criminal justice systems and to strengthen such trust. At the same time, there is room for further action of the European Union to ensure full implementation and respect of Convention standards, as well as, where appropriate, to ensure consistent application of the applicable standards and to raise existing standards.
- (3) The European Union has successfully established an area of freedom of movement and residence, which the citizens benefit from by increasingly traveling, studying and working in other countries than that of their residence. However, the removal of internal borders and the increasing exercise of the rights to freedom of movement and residence have as an inevitable consequence that an increasing number of people are becoming involved in criminal proceedings in a Member State other than that of their residence. In those situations, the procedural rights of suspected or accused persons become particularly important in order to safeguard the right to a fair trial.

- (4) Indeed, whilst various measures have been taken at the European Union level to guarantee a high level of safety for citizens, there is an equal need to address specific problems that can arise when a person is the suspect or accused in criminal proceedings.
- (5) This calls for specific action on procedural rights, in order to ensure the fairness of the criminal proceedings. Such action, which can comprise legislation as well as other measures, will enhance citizens' confidence that the European Union and its Member States will protect and guarantee their rights.
- (6) The 1999 Tampere European Council concluded that in the context of implementing the principle of mutual recognition, work should also be launched on those aspects of procedural law on which common minimum standards are considered necessary in order to facilitate the application of the principle of mutual recognition, respecting the fundamental legal principles of Member States (Conclusion 37).
- (7) Also, the 2004 Hague Programme states that further realisation of mutual recognition as the cornerstone of judicial cooperation implies the development of equivalent standards of procedural rights in criminal proceedings, based on studies of the existing level of safeguards in Member States and with due respect for their legal traditions (point 3.3.1.).
- (8) Mutual recognition presupposes that the competent authorities of the Member States trust the criminal justice systems of the other Member States. For the purpose of enhancing mutual trust within the European Union, it is important that, complementary to the Convention, there exist European Union standards for the protection of procedural rights which are properly implemented and applied in the Member States.

- (9) Recent studies show that there is wide support among experts for European Union action on procedural rights, through legislation and other measures, and that there is a need for enhanced mutual trust between the judicial authorities in the Member States <sup>1</sup>. These sentiments are echoed by the European Parliament <sup>2</sup>. In its communication for the Stockholm programme <sup>3</sup>, the European Commission observes that strengthening the rights of the defence is vital in order to maintain mutual trust between the Member States and public confidence in the European Union.
- (10) Discussions on procedural rights within the context of the European Union over the last few years have not led to any concrete results. However, a lot of progress has been made in the area of judicial and police cooperation on measures that facilitate prosecution. It is now time to take action to improve the balance between these measures and the protection of procedural rights of the individual. Efforts should be deployed to strengthen procedural guarantees and the respect of the rule of law in criminal proceedings, no matter where citizens decide to travel, study, work or live in the European Union.
- (11) Bearing in mind the importance and complexity of these issues, it seems appropriate to address them in a step-by-step-approach, whilst ensuring overall consistency. By addressing future actions one area at a time, focused attention can be paid to each individual measure, so as to enable problems to be identified and addressed in a way that will give added value to each measure.
- (12 - ex 11a) In view of the non-exhaustive nature of the catalogue of measures laid down in the Annex, the Council should also consider, in due course, the possibility of addressing the question of protection of procedural rights other than those listed in that catalogue.

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<sup>1</sup> See inter alia the "*Analysis of the future of mutual recognition in criminal matters in the European Union*", report of 20 November 2008 by the *Université Libre de Bruxelles*.

<sup>2</sup> See e.g. the "*European Parliament recommendation of 7 May 2009 to the Council on development of an EU criminal justice area*", 2009/2012(INI), point 1 a).

<sup>3</sup> "*An area of freedom, security and justice serving the citizen*", COM (2009) 262/4 (point 4.2.2.).

(13 - ex 12) Any new EU legislative acts in this field should be coherent and consistent with the minimum standards set out by the Convention (...), as interpreted by the European Court of Human Rights,

Hereby adopts the following Resolution:

1. Action should be taken at the level of the European Union in order to strengthen the rights of suspected or accused persons in criminal proceedings. Such action can comprise legislation as well as other measures.
2. The Council endorses the "Roadmap for strengthening procedural rights of suspected or accused persons in criminal proceedings", set out in the Annex to this Resolution, as the basis for future action. The rights included in this roadmap, which could be complemented by other rights, are considered to be fundamental procedural rights and action in respect of these rights should be given priority at this stage.
3. The Commission is invited to submit proposals regarding the measures set out in the roadmap, and consider presenting the Green Paper mentioned under point F <sup>1</sup>.
4. The Council will examine all proposals presented in the context of the roadmap and pledges to deal with them as matters of priority.

(<sup>2</sup>)

5. The Council will act in full cooperation with the European Parliament, in accordance with the applicable rules, and duly collaborate with the Council of Europe.

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<sup>1</sup> Some Member States asked to delete the reference to the Green Paper mentioned under 'F', relating to the right to review of the grounds for pre-trial detention. Other Member States, however, urged to maintain this item in the roadmap. In order to address the concerns by the first mentioned group of Member States, the wording of this point was slightly refined, using the words "consider presenting".

<sup>2</sup> One delegation suggested adding a reference to measures relating to victims; other delegations opposed this suggestion, urging to keep the two areas separated.

**Roadmap for strengthening procedural rights of suspected or accused persons  
in criminal proceedings**

The order of the rights indicated in this roadmap is indicative. It is underlined that the explanations provided below merely serve to give an indication of the proposed action, and do not have as their objective to regulate the precise scope and content of the measures concerned in advance.

Measure A: Translation and Interpretation

*Short explanation:*

The suspected or accused person must be able to understand what is happening and to make him/herself understood. A suspected or accused person who does not speak or understand the language that is used in the proceedings will need an interpreter and translation of essential procedural documents. Particular attention should also be paid to the needs of suspects or accused with physical impairments which affect their ability to speak or understand the language used in the proceedings.

Measure B: Information on Rights and Information about the Charges

*Short explanation:*

A person that is suspected or accused of a crime should get information on his/her basic rights orally or, where appropriate, in writing, e.g. by way of a letter of rights. Furthermore, that person should also receive information promptly about the nature and cause of the accusation against him or her. A person who has been charged should be entitled, at the appropriate time, to the information necessary for the preparation of his or her defence, it being understood that this should not prejudice the due course of the criminal proceedings.

## Measure C: Legal Advice and Legal Aid

### *Short explanation:*

The right to legal advice (through a legal counsel) for the suspected or accused person in criminal proceedings at the earliest appropriate stage of such proceedings is fundamental in order to safeguard the fairness of the proceedings; the right to legal aid should ensure effective access to the aforementioned right to legal advice.

## Measure D: Communication with Relatives, Employers and Consular Authorities

### *Short explanation:*

A suspected or accused person who is deprived of his or her liberty shall be promptly informed of the right to have at least one person, such as a relative or employer, informed of the deprivation of liberty, it being understood that this should not prejudice the due course of the criminal proceedings. In addition, a suspected or accused person who is deprived of his or her liberty in a State other than their own shall be informed of the right to have the competent consular authorities informed of the deprivation of liberty.

## Measure E: Special Safeguards for Suspected or Accused Persons who are Vulnerable <sup>1</sup>

### *Short explanation:*

In order to safeguard the fairness of the proceedings, it is important that special attention is shown to suspected or accused persons who cannot understand or follow the content or the meaning of the proceedings, owing e.g. to their age, mental or physical condition.

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<sup>1</sup> Some Member States suggested to incorporate the ‘special safeguards for suspected or accused persons who are vulnerable’ in the other measures, and to delete this item as a separate issue. COM, supported by several Member States, urged to keep this as a separate issue in the roadmap.

## Measure F: A Green Paper on the Right to Review of the Grounds for Pre-Trial Detention<sup>1</sup>

### *Short explanation:*

The time that a person can spend in detention before being tried in court and during the court proceedings varies a lot between the Member States. Excessively long periods of pre-trial detention are detrimental for the individual, can (...) prejudice the judicial cooperation between the Member States and do not represent the values for which the European Union stands. The possibility of establishing a periodical review for the justification of continued pre-trial detention should be examined.

(<sup>2</sup>)

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<sup>1</sup> Some Member States asked to delete this measure relating to a Green Paper. Various other Member States, however, urged to maintain this measure in the roadmap. Reference is made to the comment in footnote 1 on page 5.

<sup>2</sup> One delegation suggested adding a measure relating to 'presumption of innocence'. Another delegation suggested adding a measure relating to the 'right to remain silent'. Some delegations expressed support for this latter suggestion, whereas others opposed it or expressed concerns.