

Brussels,  
C/2010/5295

*Dear President,*

*The European Commission thanks the Austrian Bundesrat for sharing its reasoned opinion on the Commission proposal for a Directive of the European Parliament and the Council on the right to interpretation and to translation in criminal proceedings {COM (2010) 82} and would like to provide the following clarifications on the issue of subsidiarity.*

*The necessity of EU legislation in this area is linked with the functioning of judicial cooperation in criminal matters. Mutual recognition, which has been the cornerstone of European judicial cooperation since the Tampere Council of 1999, requires a high degree of mutual trust between judicial authorities of different Member States to function properly. In order to reinforce this mutual trust, certain minimum common standards need to be set at EU level: only subject to this condition, will judicial authorities in the Union be sure - when called upon to give execution to a judicial decision handed down in another Member State - that certain minimum safeguards exist, irrespective of the country where proceedings are held.*

*By definition, this objective cannot be achieved by Member States acting alone, as minimum standards, in order to be common to all the Member States, may only be set by EU legislation. The proposed legislation, thus, merely provides for minimum rules for the specific rights covered by the scope and does not harmonise Member States' criminal law systems. The Commission thus considers that the proposal stands the test of the subsidiarity principle.*

*The Commission takes due note of the doubts expressed by the Bundesrat on the provision of free of charge interpretation for meetings between the defendant and his counsel and the translation of essential documents. However, the Commission would like to point out, in this respect, that these requirements stem from the European Convention on Human Rights as has been interpreted by the European Court of Human Rights. Therefore, EU legislation in this field must be consistent with existing rights under the European Convention. The Commission will follow this aspect closely when it monitors the implementation of the directive.*

*The Commission is confident that the adoption of this measure, the first of those foreseen in the Roadmap endorsed by the Heads of State and Government at the European Council of December 2009, will result in fair trial rights being upheld in a more systematic and streamlined way across the EU.*

*Yours sincerely,*

*/-/ Neelie Kroes*

*Mr Martin Preiner  
President of the Bundesrat  
of the Republic of Austria  
A-1017 WIEN*