

## ROADMAP

Title of the initiative: **Directive on the Right to Information in Criminal Proceedings**  
Type of initiative (CWP/Catalogue/Comitology): 2010/JLS/070  
Lead DG/contact person/details: JLS/E3  
Expected date of adoption of the initiative (month/year): July 2010  
Date of modification:  
Version No:

### Initial IA screening & planning of further work

#### **A. Context and problem definition**

(i) What is the political context of the initiative? (ii) How does this initiative relate to past and possible future initiatives, and to other EU policies?

The proposal is the second measure in the Procedural Rights Roadmap. The Roadmap (adopted by the Council on 30/11/2009) instructs COM to put forward proposals on various procedural rights. COM has been trying since 2002 to have EU legislation on procedural rights. This is needed because Member States have decided to favour mutual recognition as the preferred method of judicial cooperation. However, the operation of mutual recognition measures such as the European Arrest Warrant is hindered because there are insufficient levels of trust between judicial authorities in different Member States and a reported concern that some Member States do not offer suspects and accused persons sufficient safeguards in criminal proceedings to enable judicial decisions from other Member States to be recognised as fully "equivalent" – a necessary condition for mutual recognition to function efficiently.

In 2004, COM put forward a proposal for a Framework Decision covering 5 different procedural rights. This proposal was negotiated for 3 years before being abandoned in 2007 as 6 Member States said they would not support it. In 2009, the SE Presidency revived the file, asking COM to adopt a new, "step by step" approach, and tackling each of the 5 rights in a separate legislative proposal. The overall Resolution, setting out the rights is known as the "Roadmap", with the measures listed A to E. The rights are the same as those in COM's 2004 proposal but they were set out in a different order of priority, with the rights that were most likely to be subject to agreement in the first two positions (A and B). They were selected simply on the basis of being the least controversial and the ones about which agreement had come closest to being reached in the earlier round of negotiations.

Measure A, on the right to interpretation and translation, is in negotiation now, and the impact assessment has started on the second measure, Measure B, on the right to information in criminal proceedings. The Measure, which involves requiring authorities in Member States to issue a written "Letter of Rights" to suspected persons, and to give persons facing criminal charges information about the charge, aims to increase the level of trust between judicial authorities in Member States by having common minimum standards. In 2004, only 1 Member State had a Letter of Rights system. Now already 11 Member States use this system, which suggests that it is popular and is likely to be more acceptable to all Member States. However, it should be noted that one measure alone cannot achieve the objective of increasing mutual trust – that will only be fully achieved when all the Roadmap measures are in place. That said, this has been identified by Bar Associations, NGOs and some Member States (DE in particular) as a measure that would promote greater trust. It needs to be carried out at EU level in order to make sure that all Member States operate the same system, otherwise the effect of increasing mutual trust will be lost

What are the main problems identified?

Suspects and accused persons do not receive sufficient information about their rights and about the charges facing them. There is an added dimension in that many suspects and accused person face criminal proceedings in a country other than their own and they do not always understand the language of the proceedings. This can lead to unsafe convictions, which in turn leads to judicial authorities in some Member States to have doubts about the safety of proceedings in other

Member States. For the confidence and comfort of all judicial authorities, it has been identified as a good idea to have a transparent and unified system throughout the EU to ensure that suspects and accused persons are given information about their rights in a manner which makes it easy to verify whether the information has actually been transmitted. It also makes it easy to make sure foreign suspects understand if the Letter of Rights is given to them in a language they understand.

Who is affected?

First, EU citizens and third countries national suspects or accused persons in criminal proceedings in an EU Member State. Second, judicial authorities and lawyers are also affected because they currently do not have a way of knowing whether the suspect has been told of his rights. The ECtHR has said that Member States must play an "active" part in informing suspects of their rights, something which is not always the case today.

(i) Is EU action justified on grounds of subsidiarity? (ii) Why can the objectives of the proposed action not be achieved sufficiently by Member States (necessity test)? (iii) As a result of this, can objectives be better achieved by action by the Community (test of EU Value Added)?

EU action is mandated by the Roadmap. Impact Assessment is currently being carried out so as to assess what action is optimal.

It is a political decision taken in Council to mandate the EU to put forward proposals for legislation according to the Roadmap. Member States want to be able to trust each other completely and have a way of verifying that their national will be treated fairly if they are subject to proceedings in another EU Member State. For this reason, the measure has to have an EU wide uniform application as the trust cannot be achieved if this is done on a voluntary basis by each Member State using different methods of transmission of information. Finally, the situation can be described as patchy in the EU and it is important to grant comparable levels of procedural rights across the EU, in accordance with the Charter of Fundamental Rights.

## **B. Objectives of EU initiative**

What are the main policy objectives?

The main policy objective is to promote mutual trust by having common minimum standards of procedural rights. This will only be achieved once all the Roadmap proposals have been translated into legislation so this should be seen as a whole package of objectives of which this measure represents a part.

The general objective is to reinforce fundamental rights, especially the right to a fair trial as laid down in Articles 47-50 of the Charter of Fundamental Rights.

The operational objective is to achieve a situation whereby all Member States have in place an effective and verifiable method for transmission of essential information to suspects and accused persons in criminal proceedings.

Do the objectives imply developing EU policy in new areas or in areas of strategic importance?

N/A

## **C. Options**

(i) What are the policy options? (ii) What legislative or 'soft law' instruments could be considered? (iii) Would any legislative initiatives go beyond routine update of existing legislation?

Impact assessment is underway. Options considered in the IA, apart from the baseline/status quo option, are:

- recommendations for best practice (non-legislative option);
- legislation, with two options in the form of draft Directives either

(a) setting an EU wide model Letter of Rights for all Member States to adopt, or

(b) defining, by way of a list, the rights that should be mentioned in a Letter of Rights and requiring Member States to set up a system for transmitting them, but leaving them free to choose the wording, format and exact content of the Letter of Rights);  
- a mix of non-legislative and legislative.

The latter option is the preferred option.

Does the action proposed in the options cut across several policy areas or impact on action taken/planned by other Commission departments?

No.

Explain how the options respect the proportionality principle.

The preferred option is the least intrusive in that it simply lays down the minimum information that should be contained in a Letter of Rights but leaves Member States free as to style, content etc. It will place only those obligations on Member States that are absolutely necessary to achieve the objectives.

#### **D. Initial assessment of impacts**

What are the significant impacts likely to result from each policy option (cf. list of impacts in the Impact Assessment Guidelines pages 32-37), even if these impacts would materialise only after subsequent Commission initiatives?

The anticipated impacts of EU action are:

- Baseline scenario – the status quo in terms of no EU action on rights would lead to a gradual deterioration of trust as more mutual recognition instruments come into force without commensurate safeguards.
- Non-legislative option: possible improvements in transmission of information as Member States are encouraged by best practice recommendations to bring a Letter of Rights system into force *proprio motu*. EU could fund projects to promote this, but there would be no enforceability and no legal remedy for citizens if denied rights.
- Legislative option: improved transmission of information about rights, with improved trust and better operation of mutual recognition. The enforcement and evaluation mechanisms available under this option would ensure compliance to an appropriate level.
- Mix of non-legislative and legislative: this would involve EU legislation requiring Member States to bring a Letter of Rights system into force, combined with best practice recommendations.

Could the options have impacts on the EU-Budget (above 5 Mio €) and/or should the IA also serve as the ex-ante evaluation, required by the Financial Regulation?

No.

Could the options have significant impacts on (i) simplification, (ii) administrative burden or on (iii) relations with third countries?

The proposal will probably entail an element of simplification in the longer term and have an impact on administrative burden. Member States will have an initial increase to the administrative burden in that the Letter of Rights will have to be drafted (legal expertise required) and translated (financial burden). Officials (police officers, judges, prosecutors, court officials) will need training about distribution of the Letter. Once these initial tasks have been carried out, the system should run effectively and simply. Given the complexity of the policy area, the proposal should ideally be accompanied by an implementation plan in order to propose to Member States suggestions to facilitate timely implementation. It can also have an impact on the way suspects from third countries are treated.

## **E. Planning of further impact assessment work**

When will the impact assessment (IA) work start?

The impact assessment work is underway. The contract (for a 6 month period) for the external study was signed with Matrix in February 2010. The interim report was received on 8 March. The external contractor was asked to bring forward dramatically the first part of the work to meet political expectation for the Measure to be adopted in July 2010, which meant that a 6 month contract was of no use in terms of data for IA. Matrix agreed to carry out most of the research in the first few weeks and to give as much information as possible on costs in time for submission to the IA Board (late March 2010). However, the result of this has been that the data is not in a useable form (it is only raw data and has not been sifted and classified or translated into tables) and requires considerable analysis by the desk officer.

(i) What information and data are already available? (ii) Will this impact assessment build on already existing impact assessment work or evaluations carried out? (iii) What further information needs to be gathered? (iv) How will this be done (e.g. internally or by an external contractor) and by when?

(v) What type and level of analysis will be carried out (cf. principle of proportionate analysis)?

There is information and data available. 5 separate studies that are either complete or near to completion contain data which is useful for IA, one study is devoted to the Letter of Rights and analyses which Member States have this system and which do not. The ultimate goal of the study is to devise the best model for a Letter of Rights for use in the EU. Other studies examine procedural rights generally in the Member States and contain data on transmission of information about rights.

This IA builds on those 5 studies, or rather makes use of information contained in them. Unfortunately there is no time to collect detailed information on costs (such as training costs in the Member States to enable police officers and court staff to familiarise themselves with the Letter of Right system) so this information will have to be extrapolated from other sources such as the experience of those Member States that have already introduced this system. The external contractor is attempting to put this costs information together. The Impact Assessment will also use statistical data that was compiled for the IA for Measure A of the Roadmap (information about numbers of criminal proceedings per Member State, costs of translation, e.g. for the Letter of Rights and on numbers of foreign defendants in criminal proceedings in the Member States). The collection of information on cost is being carried out by the external contractor (with some internal COM input) and most of the other research is being carried out by the desk officers. The subject proved a little too technical for the external contractors who were not able to understand the details and procedures of criminal proceedings well enough in the very short time available to produce any useful analysis of options or impacts of options so this work has been carried out entirely internally (after one attempt by the external contractors revealed that their understanding of this highly technical area was too sketchy for them to carry out this task in the time available).

Which stakeholders & experts have been/will be consulted, how and at what stage?

Justice Forum, Bar Associations, ENCJ, Member States, ECLAN have all been consulted.