



EUROPEAN COMMISSION
IMPACT ASSESSMENT BOARD

Brussels, D(2010)

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Opinion

Title **DG JLS – Impact Assessment on a proposal for a Directive on the right to information in criminal proceedings**

(draft version as submitted 9 April 2010)

(A) Context

To increase mutual trust, and thus improve the operation of mutual recognition, in November 2009 the European Council adopted the Roadmap on Procedural Rights setting out a step-by-step approach to strengthening the rights of suspects and accused persons. This was incorporated in the Stockholm Programme the following month. In the Roadmap, the Council requests the Commission to submit proposals on a number of measures to establish common minimum standards for fair trial rights in the EU. The Commission adopted a proposal for the first step, the right to interpretation and translation, in July 2009 (Measure A). This impact assessment accompanies the Commission's proposal for the second step (Measure B) in the Roadmap, on information on rights and information on charges.

(B) Overall assessment

The report is generally of acceptable quality. Clarification is nevertheless required on a number of important issues. First, the report should put this initiative more clearly in the context of the Roadmap on Procedural Rights, and against that background clarify or adjust the scope and objectives of the initiative. It should in particular make clearer whether the aim is to ensure that existing rights are understood by suspects and complied with by authorities, or to introduce additional rights. Second, the report needs to strengthen evidence that current differences in fair trial standards lead to practical problems for judicial authorities. It should describe more precisely potential savings which could be expected if those problems were addressed. Finally, the report should provide a fuller analysis of the proportionality, costs and cost-effectiveness of the proposed measures, in particular of a uniform EU-wide standard Letter of Rights.

(C) Main recommendations for improvements

(1) Put this initiative more clearly in the context of the Roadmap on Procedural Rights, and against that background clarify or adjust its scope and objectives. The

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report should explain the staged approach taken in the Roadmap and make clearer how this initiative relates to the other initiatives which are set out therein. It should explain that it addresses only the right to information on the fair trial rights of suspects and accused persons, draws solely on the existing human rights instruments (such as European Convention of Human Rights, EU Charter of Fundamental Rights) or jurisprudence (such as of the European Court of Human Rights), and does not create new rights. It should also make clear that the effectiveness of a Letter of Rights will depend on the adoption of other measures from the Roadmap.

Given that the non-respect of the right to information is considered a problem that this initiative should address, the report should clarify to what extent it should be included in the objectives alongside the general objective about restoring mutual trust and improving judicial cooperation. The specific objectives to improve Member States' confidence in the fair operation of criminal justice systems throughout the EU should be expressed in more concrete terms, for example, greater efficiency of the functioning of judicial cooperation mechanisms, reducing delays/costs of European Arrest Warrant (EAW) proceedings.

(2) Strengthen the evidence that current differences in fair trial standards lead to practical problems for judicial authorities. The report should focus more on the practical consequences of the lack of trust between judicial authorities. It should strengthen evidence for the link between insufficient provision of information on the rights of suspects and inefficient judicial cooperation. It should also provide examples illustrating that delays in European Arrest Warrant proceedings are linked to the factors addressed in the operational objectives such as the lack of clarity of language of the information provided, the fact that it is only oral, available too late, or is insufficient in terms of content/level of detail. The report should clarify that if certain Member States do not respect the right to information this creates costs in other Member States in the form of delays in proceedings, aborted proceedings, appeals, refusal to execute a EAW, etc.

(3) Provide a fuller analysis of proportionality of the proposed measures. During the meeting with the Board, DG JLS explained that option A5 (EU-wide letter of rights to be used uniformly in all Member States) is a preferred option alongside option A4 (Letter of rights containing the minimum set of rights, with Member States free to add further rights). Given the concerns expressed by the Member States about option A5, the report should address the issue of proportionality of this measure with respect to the problems and objectives (does the lack of a uniform standard cause specific problems for the efficient judicial cooperation, free movement of citizens?). This discussion should also take account of the fact that, as the report states, under this option Member States currently providing procedural rights that go beyond those enshrined in the European Convention of Human Rights and the jurisprudence of the European Court of Human Rights would either need to lower their standards or provide a letter of rights with two separate sets of rights (the harmonised EU one and an additional national one).

(4) Cost and cost-effectiveness of the options. Given that the report provides the estimates of costs in terms of wide ranges where the lower and upper values refer to the different (unnamed) Member States, it does not allow for an assessment of the overall cost of the options. Consequently, the report should rather present the cost ranges for each of the Member States affected and where this range is wide, discuss the most likely cost.

The report should also clarify why option B3 ("Creation of an EU-wide duty to inform suspects and accused persons about the case against them by granting them access to the

case file") is more cost-effective than option B2 ("Creation of an EU-wide duty to inform suspects and accused persons about the case against them by means of Member States choosing") and whether it would bring about more efficiency in judicial cooperation and thereby better fulfil the objective of this initiative.

Some more technical comments have been transmitted directly to the author DG and are expected to be incorporated in the final version of the impact assessment report.

(D) Procedure and presentation

The report would benefit from more systematic provision of references to annexes. The main elements related to monitoring and evaluation should be added to the executive summary.

(E) IAB scrutiny process

Reference number	2010/JLS/070 (catalogue)
External expertise used	No
Date of Board Meeting	5 May 2010