

Brussels, 28/01/2011
C/2011/486

Dear President,

The European Commission welcomes the broad support expressed by the Italian Senate to its proposal for a draft directive on the right to information in criminal proceedings {COM(2010) 392}.

As concerns the remarks made on the text of the proposal, the European Commission would like to provide the following clarifications.

As regards Article 7(1) of the proposal, the Commission agrees that such assessment should be made by a judge or independent judicial authority but does not think it is necessary to state it explicitly in the text. Indeed, this is in accordance with the ECHR which provides that the decision on pre-trial detention or release is to be made by a judge. If access to documents is refused, a remedy will lie with a judge if the accused wishes to challenge the decision not to disclose certain documents. The Commission takes this opportunity to inform the Senate that, during negotiations on the proposal, it has opposed proposals to dilute the text to cover only access to "information about the case" rather than access to the documents themselves. The Commission is arguing for stronger protection, in line with your position.

Concerning Article 8(1) of the proposal, the Commission agrees with the Italian Senate that the accused person should have understood the general thrust of the information on rights.

Finally, the Commission agrees with the suggestion that proper implementation of the right should involve bodies observing the respect of these rights. These could include an Ombudsman, or these Bar Associations and NGOs may also take on this role in an informal capacity. The Commission's implementation report (which will normally be delivered a year after the implementation deadline) will consider very carefully the mechanisms which exist in each Member State to ensure that suspects have actually received and understood the information.

I am looking forward to further developing our contacts and exchanges.

Yours sincerely,

*Mr Renato Schifani
President
Senate of the Republic
Piazza Madama
00186 Roma
Italy*