



EUROPEAN COMMISSION

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Dear Lord Boswell,

The European Commission warmly welcomes the report prepared by the House of Lords on "the European Union's Policy on Criminal Procedure", which is a very useful contribution to the ongoing debate on criminal procedural law at EU level.

The Commission shares the House of Lords' view that existing EU criminal procedure law and current Commission proposals provide benefits to British citizens travelling abroad and to law enforcement authorities and welcomes the House of Lords' assessment that the UK's continuous participation in EU mutual recognition legislation is beneficial to UK criminal enforcement.

The Commission welcomes at the same time the strong support expressed by the House of Lords for the Commission's efforts to set minimum rights for defendants and victims.

After a decade of legislating in the field of judicial cooperation in criminal matters, it is clear that there is no mutual recognition without mutual trust in the respective legal systems of the 27 Member States. Strengthening this mutual trust, by setting common minimum standards, is therefore the priority of this Commission in the field of criminal justice.

The Commission also shares the views of the House of Lords that such minimum rights must be fully compatible with international standards as regards fundamental rights, not only the European Convention on Human Rights (hereafter "ECHR"), but also the Charter of Fundamental Rights of the European Union. The Lisbon Treaty provides new tools to ensure such compatibility.

In relation to the scope of EU legislation in general, the Commission welcomes the House of Lords' view that the legal basis for action in Article 82(2) TFEU does not have to be narrowly construed. The Commission notes the conclusion (paragraph 62) that minimum rules operable throughout the EU can improve the position of EU citizens who may find themselves with fewer rights than they would expect in their own country. The Commission welcomes the House of Lords' conclusion (paragraph 70) that EU legislation providing minimum rights

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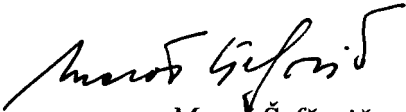
can improve the rights of citizens in the criminal procedure and can create the mutual trust between judicial authorities that is needed for mutual recognition.

The Commission also notes the call to firmly ground legislation on procedural rights for suspects and accused persons in the principles of the ECHR and other international law norms (paragraph 98-99). While the principles in the ECHR provide a good point of departure, the provisions are general and there are divergent interpretations of the ECHR case law. To ensure the coherence that is needed for mutual trust and mutual recognition in the context of the EU, there is a place for a policy approach based on the interpretation of the case law in a manner that is most favourable to the defendant. In this way, we ensure that there is no risk of the proposal falling below the standards of the European Charter of Fundamental Rights and the ECHR.

In relation to the European Arrest Warrant (EAW), the Commission endorses the House of Lords' conclusion (paragraph 69) that EU legislation setting down minimum rights can help avoid the risk of mutual trust being undermined by refusals of mutual recognition in EAW cases on human rights grounds in justified cases. This conclusion very much reflects the Commission's position as set out in its 2011 implementation report on the EAW, which acknowledged the primacy of fundamental rights considerations while stressing the importance of the ongoing work to improve the successful EAW system through complementary procedural rights measures.

I hope that these clarifications respond to the issues raised by the House of Lords and I look forward to continuing our political dialogue in the future.

Yours faithfully,


Maroš Šefčovič
Vice-President