

COM (2009) 338
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Proposal for a
COUNCIL FRAMEWORK DECISION
on the right to interpretation and to translation in criminal proceedings

Aim of the Proposal

The aim of this Framework Decision is to commit Member States to ensure that any person suspected or accused of a criminal offence who does not understand the language used in proceedings is provided with interpretation throughout all proceedings.

Legal Basis quoted in the Proposal

Article 31 1(c) of the Treaty on European Union

1. Common action on judicial cooperation in criminal matters shall include:
 - (a) facilitating and accelerating cooperation between competent ministries and judicial or equivalent authorities of the Member States, including, where appropriate, cooperation through Eurojust, in relation to proceedings and the enforcement of decisions;
 - (b) facilitating extradition between Member States;
 - (c) ensuring compatibility in rules applicable in the Member States, as may be necessary to improve such cooperation;**
 - (d) preventing conflicts of jurisdiction between Member States;
 - (e) progressively adopting measures establishing minimum rules relating to the constituent elements of criminal acts and to penalties in the fields of organised crime, terrorism and illicit drug trafficking.

Purpose of the COSAC Subsidiarity Check

The COSAC Chairpersons in their meeting on 10 February 2009 in Prague agreed to carry a COSAC-coordinated subsidiarity check on the Proposal for a Framework Decision on procedural rights in criminal proceedings in 2009. This decision was confirmed by the XLI COSAC meeting on 12 May 2009 in Prague.

This document is one which the Malta House of Representatives had selected from the Commission Work Programme for 2009 to be submitted to the COSAC Subsidiarity Check in 2009. The actual proposal is very watered down version of a more complex Proposal in 2004, in favour of a step-by-step approach way of proceeding. In fact, the Proposal in question is limited to the provision of translation and interpretation to suspects being charged in a Member State other than their own.

Commission's Justification for the need of action at EU Level

Subsidiarity

The objective of the proposal cannot be sufficiently achieved by Member States alone, since the aim of the proposal is to promote trust between them and it is therefore important to agree on a common minimum standard that applies throughout the whole of the European Union. The proposal will approximate Member States' substantive procedural rules in respect of interpretation and translation in criminal proceedings in order to build mutual trust. The proposal therefore complies with the subsidiarity principle.

Proportionality

The proposal complies with the proportionality principle in that it does not go beyond the minimum required in order to achieve the stated objective at European level and what is necessary for that purpose.¹

¹ [COM \(2009\) 338](#)

Convention for the Protection of Human Rights and Fundamental Freedoms

Right to liberty and security - According to Article 5(2) everyone who is arrested shall be informed promptly, in a language which he understands, of the reasons for his arrest and of any charge against him.

Right to a fair trial - Furthermore Articles 6 (a) and (e) state that anyone charged with a criminal offence is to be informed promptly, in a language which he understands and in detail, of the nature and cause of the accusation against him and that they have the right to free assistance of an interpreter if he cannot understand or speak the language of the court.

Malta ratified this Convention on 28 February 1967.

Article 6 of the **Treaty on European Union** states that the Union shall respect the rights as guaranteed by this Convention and as they result from the constitutional traditions common to Member States.²

Current national situation

The current national situation is defined in Section 516 (1) of the Criminal Code and Article 3 of the Judicial Proceedings (Use of English Language) Act.

When a foreigner appearing in the Maltese Courts declares that he/she neither understands Maltese nor English, all the proceedings are held in Maltese, which are translated into a language he/she understands by an interpreter appointed by the Court. The interpretation expenses are borne by the State.

In the event that an accused understands English, the proceedings are held in English.

With regard to requests for translation, the Courts have two persons with a legal background who are responsible for the translation of documents. The expenses are borne by those requesting the translation. Furthermore, an accused, who feels that the laws in Malta are more favourable than in his/her native country, has the right to be tried in Malta.

² The Union shall respect fundamental rights, as guaranteed by the European Convention for the Protection of Human Rights and Fundamental Freedoms signed in Rome on 4 November 1950 and as they result from the constitutional traditions common to the Member States, as general principles of Community law.

Statement of the Foreign and European Affairs Committee

The Foreign and European Affairs Committee of the House of Representatives of Malta examined the Proposal for a Council Framework Decision on the right to interpretation and to translation in criminal proceedings and on the basis of information given by the competent national institutions, arrived at the following conclusion:

Article 31 (1) (c) of the Treaty on European Union, quoted as the legal basis for this Proposal, states that:

“Common action on judicial cooperation in criminal matters shall include:

(c) ensuring compatibility in rules applicable in the Member States, as may be necessary to improve such cooperation”

The Proposal in question however relates essentially to human rights, particularly those related to the right to a fair trial. A fair trial is one in which the accused, amongst other things, can understand the language of the proceedings.

It is submitted that Article 31 (1) (c) does not have the objective of regulating the procedures of a fair trial. The right of a fair trial is already regulated by each member state in accordance with a common standard laid out in the human rights provisions of each member state in line with the Council of Europe European Convention for the Protection of Human Rights and Fundamental Freedoms signed and ratified by all member states and considered by the ECJ as forming part of the general principles of Community law. Furthermore, on ratification of the Treaty of Lisbon, this matter will additionally be regulated by the Human Rights Charter which shall have the effect of EU law.

Furthermore, the practice in the EU countries of adhering to the rule of law will be further established when the Charter of Human Rights is adopted by the EU once the Lisbon Treaty comes into force.

Consequently it is felt that this Proposal represents an instance of overregulation and duplication since the matter is already sufficiently uniformly regulated by each individual member state in accordance with an agreed common standard as set out in the European Convention for the Protection of Human Rights (forming part of the general principles of law in EU Law) and the Human Rights Charter to be given legal effect on ratification of the Treaty of Lisbon. This proposal therefore goes beyond the issue of subsidiarity and constitutes an unwarranted measure at the level of the EU.