

RESOLUTION OF THE COUNCIL OF 30 NOVEMBER 2009 ON A
**ROADMAP FOR STRENGTHENING PROCEDURAL
RIGHTS OF SUSPECTED OR ACCUSED PERSONS IN
CRIMINAL PROCEEDINGS**

ROADMAP FOR STRENGTHENING PROCEDURAL RIGHTS OF SUSPECTED OR ACCUSED PERSONS IN CRIMINAL PROCEEDINGS

- **Measure A: Translation and Interpretation**
- **Measure B: Information on Rights and Information about the Charges**
- **Measure C: Legal Advice and Legal Aid**

ROADMAP FOR STRENGTHENING PROCEDURAL RIGHTS OF SUSPECTED OR ACCUSED PERSONS IN CRIMINAL PROCEEDINGS

- **Measure D: Communication with Relatives, Employers and Consular Authorities**
- **Measure E: Special Safeguards for Suspected or Accused Persons who are Vulnerable**
- **Measure F: A Green Paper on Pre-Trial Detention**
- "The order of the rights indicated in this Roadmap is indicative. It is emphasised that the explanations provided ... merely serve to give an indication of the proposed action, and do not aim to regulate the precise scope and content of the measures concerned in advance."

MEASURE A

DIRECTIVE 2010/64/EU OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL of 20 October 2010 on the right to interpretation and translation in criminal proceedings

- Last day of implementation: 27 October 2013.

KEY ELEMENTS

- Right to interpretation free of charge
- Translation of essential documents
- Sufficient quality

MEASURE B

DIRECTIVE 2012/13/EU OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL of 22 May 2012 on the right to information in criminal proceeding

- Last day of implementation: 2 June 2014

KEY ELEMENTS

- A Letter of Rights on arrest
- Right to information about the charge
- Right of access to case file:
any documents relating to the case that are *necessary to challenge* the lawfulness of an arrest or detention.

MEASURE C (+ D)

**DIRECTIVE OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL
of on the right of access to a lawyer in criminal proceedings and
European arrest warrant proceedings, and on the rights to have a
third party informed upon deprivation of liberty and to communicate,
while deprived of liberty, with third persons and with consular authorities**

**Act adopted by Council after Parliament's 1st reading: 07/10/2013.
Awaiting signature of act.**

KEY ELEMENTS

- Right of access to a lawyer
- Right to confidentiality of communications with a lawyer
- Right to have third person informed of the detention
 - Subject to the possibility of a temporary derogation
- Right to communicate with third person(s) and/or consular authorities
- Access to a lawyer in EAW cases.
 - In executing state: when requested for surrender.
 - in issuing state: following detention in exec-state: right to appoint a lawyer in the issuing state.

What about LEGAL AID?

- **WHY SEPARATED?**
- Some Member States provide legal aid for the investigation stage; others do not and only cover the trial stage.
- Variations in cover also apply to European Arrest Warrant cases, appeals (including to the European Court of Human Rights) and accessory work such as complaints about detention conditions.
- Some Member States pay the lawyer directly for the hours worked (but usually with a maximum number of hours per case), some have systems where a maximum amount is paid per case (which can be very low and not provide adequate remuneration for lawyers providing legal aid and thus act as a disincentive to do legally aided work).
- Some Member States provide Courts or Bar associations with a budget and those bodies then have to administer legal aid. Some Ministries of Justice administer legal aid, and in other Member States a separate body has been created to administer the scheme.

COMMISSION WORK PROGRAMME 2013:

- **“The question of legal aid is to be dealt with in the separate proposal on legal aid, to be adopted in 2013 and to which this Roadmap refers.”**

MEASURE E

Special safeguards in criminal procedures for Suspected or accused Persons who are vulnerable

- **ECtHR case of SC v UK (2004):**
A condition for a fair trial is the "**effective participation**" in the trial, meaning that the person has a **broad understanding of the nature of the proceedings and is assisted if necessary**. In particular with regard to children, the Court takes into account their age, level of maturity and intellectual and emotional capacities. Similar reasoning applies to vulnerable adults.
- At present, there appears to be a disparity in levels of protection across Member States with regards to protection for children and other vulnerable suspects and accused persons in criminal proceedings.
- Member States have minimum standards for children; in line with the UN Convention on the Rights of the Child - these minima are not always enshrined in legislation and/or in practice.
- Little legislation in Member States protecting vulnerable adults, who represent a considerable proportion of defendants in the criminal justice system.
- The protection afforded to vulnerable persons includes the **means of identifying** a vulnerable person; access to a lawyer; and special measures to allow the effective participation of the person during criminal proceedings.

MEASURE F

A Green Paper on the application of EU criminal justice legislation in the field of detention

- The time that a person can spend in detention before being tried in court and during the court proceedings varies a lot between the Member States.
- Excessively long periods of pre-trial detention are detrimental for the individual, can prejudice the judicial cooperation between the Member States and do not represent the values for which the European Union stands.
- ESO – risk of flight