



PRESIDÊNCIA DO CONSELHO DE MINISTROS  
*Gabinete do Ministro dos Assuntos Parlamentares*

Ofº3470/ MAP - 29 Abril 2010

Exmo. Senhor  
Presidente da Comissão de  
Assuntos Constitucionais,  
Direitos, Liberdades e Garantias  
Deputado Osvaldo de Castro

Assunto: COM(2010) 82-Proposta de Directiva do Parlamento Europeu e do Conselho sobre o direito à interpretação e à tradução em processos penais.

Em resposta ao vosso ofício n.º 263/XI/1.ª-CACDLG de 25 de Março de 2010, encarrega-me o Ministro dos Assuntos Parlamentares de junto enviar cópia do ofício n.º 1112 de 28 do corrente, do Gabinete do Ministro da Justiça, respeitante ao assunto identificado em epígrafe.

Com os melhores cumprimentos,

O Chefe do Gabinete

  
André Miranda

ASSEMBLEIA DA REPÚBLICA	
Divisão de Apoio às Comissões	
CACDLG	
N.º Único	355762
Entrada/Série n.º	388 Data: 29/04/2010

●  
MINISTÉRIO DA JUSTIÇA  
GABINETE DO MINISTRO



Exmo. Senhor  
Chefe do Gabinete de Sua Excelência o  
Ministro dos Assuntos Parlamentares  
Palácio de S. Bento  
1249-068 LISBOA

SUA REFERÊNCIA

2339/MAP

SUA COMUNICAÇÃO

25.03.2010

NOSSA REFERÊNCIA

P.º 2606/2009

N.º 1112

LISBOA

28 ABR. 2010

**Assunto: COM (2010)82 – Proposta de Directiva do Parlamento europeu e do Conselho sobre o direito à interpretação e à tradução em processos penais**

Na sequência do pedido de informação sobre o assunto identificado em epígrafe da Comissão de Assuntos Constitucionais, Direitos, Liberdades e Garantias, o Ministério da Justiça tem a honra de informar o seguinte:

Em Julho de 2009 a Comissão apresentou uma proposta de Decisão-Quadro do Conselho relativa ao direito dos suspeitos e acusados à interpretação e tradução no âmbito dos processos penais.

Esta proposta de Decisão-Quadro definia normas comuns de base em matéria de interpretação e de tradução no âmbito dos processos penais na União Europeia, atendendo a que o direito à interpretação e à tradução, para as pessoas que não compreendem a língua do processo, está consagrado nos artigos 5º e 6º da Convenção Europeia dos Direitos do Homem (CEDH), tal como interpretados pela jurisprudência do Tribunal Europeu dos Direitos do Homem. As disposições desta proposta de Decisão-Quadro visavam facilitar o exercício destes direitos na prática.

A proposta de Decisão-Quadro ficou suspensa com a entrada em vigor do Tratado de Lisboa, a 1 de Dezembro de 2009. O processo de decisão foi reiniciado através de uma iniciativa de Estados, nos termos do artigo 82º nº 2 do TFUE, para uma Directiva do Parlamento Europeu e do Conselho relativa aos direitos à interpretação e à tradução no âmbito do processo penal, da qual Portugal é co-proponente.

O texto da iniciativa de Directiva foi submetido ao Conselho da Europa, a 18 de Janeiro de 2010, a fim de aferir a sua plena compatibilidade com a Convenção Europeia dos Direitos do Homem. A Presidência Sueca, em Julho de 2009, já tinha consultado informalmente o

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## MINISTÉRIO DA JUSTIÇA

### GABINETE DO MINISTRO

Conselho da Europa com o mesmo objectivo de aferir se a então proposta da Comissão era "Strasbourg proof". Na altura o Conselho da Europa pronunciou-se favoravelmente, ainda que com alguns comentários que foram acolhidos. O novo texto sofreu algumas (embora pequenas) alterações pelo que a submissão a Estrasburgo se revelou fundamental do ponto de vista preventivo.

O Conselho da Europa já formulou, entretanto, comentários ao texto submetido, sugerindo alteração de algumas previsões no sentido da plena compatibilização com a CEDH. As questões levantadas centram-se, essencialmente, na amplitude de aplicação dos direitos previstos (apenas aplicação em sede de sanções aplicadas por tribunal criminal), na tradução das conversas entre arguido e advogado, na definição daquilo que é considerado "importante" para efeitos de tradução, na lista de elementos a traduzir, no sumário oral e, finalmente, nas questões relativas à formação de magistrados, advogados e funcionários judiciais.

Em COPEN de 25 e 26 de Janeiro a PRES informou que teve uma reunião com a relatora do Parlamento Europeu sobre esta proposta, na qual esta indicou que gostaria que a mesma fosse adoptada em primeira leitura, tendo avançado alguns pontos em que o Parlamento Europeu gostaria de proceder a alterações:

- Quem tem de tomar a decisão sobre os documentos essenciais a traduzir;
- Questões relativas à interpretação da comunicação entre advogado e arguido;
- Questão da interpretação total ou parcial;
- Questão da renúncia dos direitos de tradução e interpretação.

Quanto ao documento sobre "boas práticas" (que acompanharia o instrumento) a Presidência informou ainda que a nova forma do instrumento não permitirá a sua publicação das boas práticas com a directiva, como inicialmente pensado, pelo que se está a trabalhar numa solução para esta problemática, nomeadamente na sua transformação num anexo ou em recomendação.

Portugal apoiou desde o início a elaboração de um instrumento visando construir/garantir um processo penal mais justo e equitativo através da garantia dos direitos à interpretação e tradução.

No quadro das negociações Portugal pronunciou-se no sentido de uma abordagem destes direitos atendendo a critérios de necessidade com vista a uma solução equilibrada, nomeadamente atendendo aos custos que tal implica para os Estados.

Portugal é co-proponente da PE-CONS 1/10 – *"Iniciativa de um Grupo de Estados-Membros para uma Directiva do Parlamento europeu e do Conselho relativa aos direitos à*



MINISTÉRIO DA JUSTIÇA

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*interpretação e à tradução no âmbito do processo penal*", procurando adoptar uma posição construtiva e de apoio aos esforços da Presidência ao longo das negociações.

Em 11 de Março de 2010, a Comissão Europeia apresentou uma proposta de Directiva com idêntico objecto, pelo que se remete em anexo tabela comparativa das duas iniciativas, contendo também as propostas de alteração adoptadas pela Comissão de Liberdades Civil, Justiça e Assuntos Internos, em 8 de Abril de 2010, bem como os comentários da Presidência.

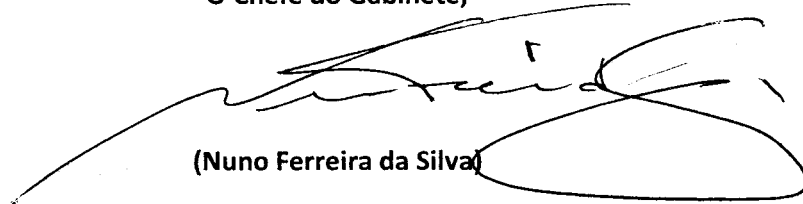
A Presidência informou, na Reunião de Amigos da Presidência de 25 de Março de 2010, querer avançar o máximo possível as negociações, com base nas propostas apresentadas, por forma a chegar a um acordo em Junho. Informou ainda que, no que respeita às negociações com o Parlamento Europeu, ainda é possível acordo antes do Verão.

Mais se informa que a Irlanda notificou o conselho, nos termos do Artigo 3 (1) do Protocolo (21) do Tratado de Lisboa, da sua intenção de ser co-proponente da iniciativa PE-CONS 1/10. O Reino Unido entretanto (por carta de 29/03/2010) também notificou o Conselho, nos termos do Artigo 3 (1) do Protocolo (21) do Tratado de Lisboa, da sua intenção de ser co-proponente da iniciativa.

A votação final na comissão LIBE terá lugar no início de Maio.

Com os melhores cumprimentos,

O Chefe do Gabinete,



(Nuno Ferreira da Silva)



**COUNCIL OF  
THE EUROPEAN UNION**

**Brussels, 9 April 2010**

**8294/10**

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**Interinstitutional File:  
2010/0801 (COD)**

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**LIMITE**

**DROIPEN 32  
COPEN 79  
CODEC 277**

**NOTE**

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From:	Presidency
To:	Delegations
Subject:	Initiative for a Directive of the European Parliament and of the Council on the rights to interpretation and to translation in criminal proceedings - Comparative table with Presidency comments/suggestions

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In view of the meeting of the Friends of the Presidency on the above initiative on Monday 12 April 2010, delegations will find attached a comparative table setting out the text of the Member States' initiative (column 1), the draft amendments adopted on 8 April 2010 by the LIBE Committee of the European Parliament in respect of this initiative (column 2<sup>1</sup>), as well as comments/suggestions by the Presidency in respect of the amendments (column 4).<sup>2</sup>

At the meeting, the Presidency intends to discuss all amendments in order to establish a draft Council position. Delegations are kindly requested to show maximum flexibility, so as to ease reaching a position which can constitute a fruitful basis for negotiations with the European Parliament and the Commission. COREPER on 14 April will be invited to confirm the draft Council position, subject to modifications, and so provide a mandate for the first trilogue with the European Parliament and the Commission, scheduled for 19/20 April 2010 in Strasbourg.

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<sup>1</sup> The text of the LIBE amendments, including the numbering, has a provisional status: the numbering will be adapted and small linguistic refinements may be made. These changes will likely be reflected in the document for COREPER.

<sup>2</sup> To be noted that the comparative table also contains, for reference, the text of the proposal submitted by the Commission proposal (column 3).

It is understood that (provisional) approval of any amendment, where subject in redrafted form, is subject to confirmation at the appropriate stage by COREPER/Council and subject to the understanding that an overall agreement be reached on the text of the initiative ("*nothing is agreed until everything is agreed*").

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MEMBER STATES' INITIATIVE	LIBE DRAFT AMENDMENTS	COMMISSION PROPOSAL (for reference)	DRAFT COUNCIL POSITION
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**Proposal for a directive on the right to interpretation and to translation  
in criminal proceedings**

Visa / Citations			
	<p><i>Having regard to the fact that the European Commission has submitted a proposal.</i></p>		<p>This new visa raises substantial legal difficulties, since the final text of the Directive can only be adopted on the basis of one legislative initiative/proposal.</p> <p>In order to address the amendment by Parliament, it is suggested to offer the insertion of a new recital 7d in the text, along the following lines:</p> <p>7c. The Member States' initiative on which this Directive is based builds further on the proposal for a Council Framework Decision on the right to interpretation and translation of essential documents in criminal proceedings<sup>3</sup>, which was presented by the European Commission in July 2009. When establishing the final wording of this Directive,</p>

<sup>3</sup> COM (2009) 338, 8.3.2009.

MEMBER STATES' INITIATIVE	LIBE DRAFT AMENDMENTS	COMMISSION PROPOSAL (for reference)	DRAFT COUNCIL POSITION
			<p>inspiration has been drawn on certain points from the proposal for a Directive of the European Parliament and of the Council on the right to interpretation and translation in criminal proceedings, which was presented by the Commission in March 2010<sup>4</sup>.</p>

<sup>4</sup> COM (2010) 0082.



MEMBER STATES' INITIATIVE	LIBE DRAFT AMENDMENTS	COMMISSION PROPOSAL (for reference)	DRAFT COUNCIL POSITION
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<b>Recitals</b>			
Compromise amendment 7 Recital -1			
	<p><i>-1. Article 47 of the EU Charter of Fundamental Rights enshrines the right to a fair trial, including the right to legal advice and representation. Article 48 of the Charter guarantees respect for the presumption of innocence and the rights of the defence.</i></p>	<p>1. Article 47 of the EU Charter of Fundamental Rights enshrines the right to a fair trial, including the right to legal advice and representation. Article 48 of the Charter guarantees respect for the presumption of innocence and the rights of the defence.</p>	<p>It is suggested to accept this new recital, but without reference to the presumption of innocence, which is not relevant for the present Directive. Proposed text:</p> <p><i>-1. Article 47 of the EU Charter of Fundamental Rights enshrines the right to a fair trial, including the right to legal advice and representation. Article 48 of the Charter guarantees respect (...) for the rights of the defence.</i></p>

MEMBER STATES' INITIATIVE	LIBE DRAFT AMENDMENTS	COMMISSION PROPOSAL (for reference)	DRAFT COUNCIL POSITION
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Amendment 1 Recital 1			
<p>1. The European Union has set itself the objective of maintaining and developing an area of freedom, security and justice. According to the conclusions of the European Council in Tampere of 15 and 16 October 1999, and in particular point 33 thereof, the principle of mutual recognition should become the cornerstone of judicial cooperation in both civil and criminal matters within the European Union.</p>	<p>1. The European Union has set itself the objective of maintaining and developing an area of freedom, security and justice. According to the conclusions of the European Council in Tampere of 15 and 16 October 1999, and in particular point 33 thereof, <i>the necessary approximation of legislation would facilitate cooperation and thus allow the principle of mutual recognition to become the cornerstone of judicial cooperation in both civil and criminal matters within the European Union.</i></p>	<p>2. The European Union has set itself the objective of maintaining and developing an area of freedom, security and justice. According to the conclusions of the European Council in Tampere of 15 and 16 October 1999, and in particular point 33 thereof, the principle of mutual recognition should become the cornerstone of judicial cooperation in both civil and criminal matters within the European Union.</p>	<p>As discussed at the meeting on 25 March, it is suggested to accept the amendment subject to the following redrafting:</p> <p>1. The European Union has set itself the objective of maintaining and developing an area of freedom, security and justice. According to the conclusions of the European Council in Tampere of 15 and 16 October 1999, and in particular point 33 thereof, the principle of mutual recognition should become the cornerstone of judicial co-operation in both civil and criminal matters within the Union, <i>since enhanced mutual recognition of judicial decisions and judgments and the necessary approximation of legislation would facilitate co-operation between authorities and the judicial protection of individual rights.</i></p>

MEMBER STATES' INITIATIVE	LIBE DRAFT AMENDMENTS	COMMISSION PROPOSAL (for reference)	DRAFT COUNCIL POSITION
<p>2. On 29 November 2000 the Council, in accordance with the Tampere Conclusions, adopted a programme of measures to implement the principle of mutual recognition in criminal matters<sup>5</sup>. The introduction to the programme of measures states that mutual recognition is "designed to strengthen cooperation between Member States but also to enhance the protection of individual rights".</p>		<p>3. On 29 November 2000 the Council, in accordance with the Tampere Conclusions, adopted a programme of measures to implement the principle of mutual recognition in criminal matters<sup>6</sup>. The introduction to the programme of measures explains that mutual recognition is "designed to strengthen cooperation between Member States but also to enhance the protection of individual rights".</p>	
<p>3. Implementation of the principle of mutual recognition of decisions in criminal matters presupposes that Member States have trust in each other's criminal justice systems. The extent of the mutual recognition exercise is very much dependent on a number of parameters, which include "mechanisms for safeguarding the rights of [...] suspects"<sup>7</sup> and common minimum standards necessary to facilitate the application of the principle of mutual recognition</p>		<p>4. Implementation of the principle of mutual recognition of decisions in criminal matters presupposes that Member States have trust in each other's criminal justice systems. The extent of the mutual recognition exercise is very much dependent on a number of parameters, which include "mechanisms for safeguarding the rights of [...] suspects"<sup>8</sup> and common minimum standards necessary to facilitate the application of the principle of mutual recognition.</p>	

<sup>5</sup> OJ C 12, 15.1.2001, p. 10.  
<sup>6</sup> OJ C 12, 15.1.2001, p. 10.  
<sup>7</sup> OJ C 12, 15.1.2001, p. 10.  
<sup>8</sup> OJ C 12, 15.1.2001, p. 10.

MEMBER STATES' INITIATIVE	LIBE DRAFT AMENDMENTS	COMMISSION PROPOSAL (for reference)	DRAFT COUNCIL POSITION
<p>4. Mutual recognition can only operate effectively in a spirit of confidence, whereby not only judicial authorities, but all actors in the criminal process see decisions of the judicial authorities of other Member States as equivalent to their own, implying "not only trust in the adequacy of one's partners' rules, but also trust that these rules are correctly applied"<sup>9</sup>.</p>		<p>5. Mutual recognition can only operate effectively in a spirit of confidence, whereby not only judicial authorities, but all actors in the criminal process see decisions of the judicial authorities of other Member States as equivalent to their own, implying "not only trust in the adequacy of one's partners' rules, but also trust that these rules are correctly applied"<sup>10</sup>.</p>	

<sup>9</sup> COM(2000) 495, 26.7.2000, p. 4.

<sup>10</sup> COM(2000) 495, 26.7.2000, p. 4.

MEMBER STATES' INITIATIVE	LIBE DRAFT AMENDMENTS	COMMISSION PROPOSAL (for reference)	DRAFT COUNCIL POSITION
Compromise amendment 8 Recital 5			
<p>5. Although all Member States are parties to the European Convention for the Protection of Human Rights and Fundamental Freedoms (ECHR), experience has shown that this in itself does not always provide a sufficient degree of trust in the criminal justice systems of other Member States.</p>	<p>5. <i>Mutual recognition of decisions in criminal matters presupposes that Member States have trust in each other's criminal justice systems. It is however necessary to strengthen mutual trust. This requires adherence to the minimum standards set out in the European Convention for the Protection of Human Rights and Fundamental Freedoms, in particular by ensuring a more consistent implementation of the rights and guarantees enshrined in Articles 5 and 6 of the ECHR. It also requires, through this Directive and other measures, further development of those standards within the European Union, including in the light of the Charter of Fundamental Rights.</i></p>	<p>6. Although all Member States are parties to the European Convention for the Protection of Human Rights and Fundamental Freedoms, experience has shown that this in itself does not always provide a sufficient degree of trust in the criminal justice systems of other Member States.</p>	<p>As discussed in the meeting on 25 March, it is suggested to keep current recital 5, but to add the following new recital 5a:</p> <p>5a. <i>Strengthening mutual trust requires a more consistent implementation of the rights and guarantees set out in Articles 5 and 6 of the ECHR. It also requires, through this Directive and other measures, further development within the European Union of the minimum standards set out in the ECHR and the EU Charter of Fundamental Rights. In the implementation of this Directive, Member States should not in any event fall below the standards set out in the Convention and the Charter as developed by the case-law of the European courts.</i></p>

MEMBER STATES' INITIATIVE	LIBE DRAFT AMENDMENTS	COMMISSION PROPOSAL (for reference)	DRAFT COUNCIL POSITION
<p>6. Article 82(2) of the Treaty provides for the establishment of minimum rules applicable in the Member States so as to facilitate mutual recognition of judgments and judicial decisions and police and judicial cooperation in criminal matters having a cross-border dimension. <i>Point (b) of Article 82(2) refers to "the rights of individuals in areas in which minimum rules may be established."</i></p>		<p>7. Article 82(2) of the Treaty provides for the establishment of minimum rules applicable in the Member States so as to facilitate mutual recognition of judgments and judicial decisions and police and judicial cooperation in criminal matters having a cross-border dimension. <i>Common minimum standards should lead to increased confidence in the criminal justice systems of all Member States which in turn should lead to more efficient judicial cooperation in a climate of mutual trust.</i></p>	

MEMBER STATES' INITIATIVE	LIBE DRAFT AMENDMENTS	COMMISSION PROPOSAL (for reference)	DRAFT COUNCIL POSITION
	<p>Amendment 43 Recital 7a (new)</p> <p><i>7a. On 30 November 2009, the Council adopted the Roadmap on Procedural Rights which requested the Commission to put forward proposals on a "step by step" basis, on the right to interpretation and translation, the right to information about rights, the right to legal advice, before trial and at trial, the right for a detained person to communicate with family members, employers and consular authorities, and protection for vulnerable suspects.</i></p>	<p>8. On 30 November 2009, the Council adopted the Roadmap on Procedural Rights which requested the Commission to put forward proposals on a "step by step" basis, on the right to interpretation and translation, the right to information about rights, the right to legal advice, before trial and at trial, the right for a detained person to communicate with family members, employers and consular authorities, and protection for vulnerable suspects.</p>	<p>As discussed in the meeting on 25 March, the following alternative texts for recitals 7a-1 and 7a-2 could be offered (7a-2 has been expanded):</p> <p>7a-1. On 30 November 2009, the Council adopted the Roadmap for strengthening procedural rights of suspected and accused persons in criminal proceedings<sup>11</sup>. Taking a step-by-step approach, the Roadmap calls for the adoption of measures regarding the right to translation and interpretation (measure A), the right to information on rights and information about the charges (measure B), the right to legal advice and legal aid (measure C), the right to communication with relatives, employers and consular authorities (measure D), and regarding special safeguards for suspected or accused persons who are vulnerable (measure E).</p>

<sup>11</sup> OJ C 205, 4.12.2009, p. 1.

MEMBER STATES' INITIATIVE	LIBE DRAFT AMENDMENTS	COMMISSION PROPOSAL (for reference)	DRAFT COUNCIL POSITION
			<p>7a-2. In the Stockholm programme, adopted on 10 December 2009, the European Council welcomed the Roadmap and made it part of the Stockholm programme (point 2.4.). The European Council underlined the non-exhaustive character of the Roadmap, by inviting the Commission to examine further elements of minimum procedural rights for suspected and accused persons, and to assess whether other issues, for instance the presumption of innocence, need to be addressed, in order to promote better cooperation in this area.</p>



MEMBER STATES' INITIATIVE	LIBE DRAFT AMENDMENTS	COMMISSION PROPOSAL (for reference)	DRAFT COUNCIL POSITION
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Amendment 45  
Recital 7b (new)

	<p><i>7b. This Directive, the first measure on the Roadmap, should lay down common standards to be applied in the fields of interpretation and translation in criminal proceedings in order to enhance the necessary confidence among Member States.</i></p>	<p>9. This Directive, the first measure on the Roadmap, should lay down common standards to be applied in the fields of interpretation and translation in criminal proceedings in order to enhance the necessary confidence among Member States.</p>	<p>As discussed in the meeting on 25 March, the following alternative text could be offered:</p> <p>7b. This Directive relates to measure A of the Roadmap. It lays down common minimum standards to be applied in the fields of interpretation and translation in criminal proceedings with a view to enhancing mutual trust among Member States.</p> <p>NB: see also the suggestion for a new recital 7c above.</p>
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MEMBER STATES' INITIATIVE	LIBE DRAFT AMENDMENTS	COMMISSION PROPOSAL (for reference)	DRAFT COUNCIL POSITION
	<p>Amendment 47 Recital 7c (new)</p> <p><i>(7c) Member States should have available, and use, in their police stations, a Letter of Rights drafted in all the languages of the European Union, listing the essential rights of a person concerned, including the right to interpretation and translation in criminal proceedings.</i></p>		<p>The Council prefers addressing this issue in the context of measure B, so as to avoid any conflict between the legislative instruments relating to measures A and B of the Roadmap.</p>
	<p>Amendment 48 Recital 7d (new)</p> <p><i>(7d) Member States are encouraged to provide information to citizens concerning the minimum standards of procedural rights in criminal proceedings, including the translation of suitable into official languages and their subsequent publication and dissemination, in particular on the Internet homepages of the police and judicial authorities.</i></p>		<p>The Council prefers addressing this issue in the context of measure B, so as to avoid any conflict between the legislative instruments relating to measures A and B of the Roadmap.</p>

MEMBER STATES' INITIATIVE	LIBE DRAFT AMENDMENTS	COMMISSION PROPOSAL (for reference)	DRAFT COUNCIL POSITION
Compromise amendment 9 Recital 8			
<p>8. The rights to interpretation and to translation for those who do not understand the language of the proceedings are enshrined in Article 6 of the ECHR, <i>as elaborated upon by</i> the case law of the European Court of Human Rights. The provisions of this Directive facilitate the application of those rights in practice. <i>To this end, this Directive intends to ensure the rights of a suspected or accused person to interpretation and to translation in criminal proceedings with a view to safeguarding that person's right to fair proceedings.</i></p>	<p>(8) The rights, <i>inter alia</i>, to interpretation and to translation for those who do not understand the language of the proceedings are enshrined in Articles 5 and 6 of the ECHR, <i>as interpreted by</i> the case law of the European Court of Human Rights. The provisions of this Directive facilitate the application of those rights in practice <i>in the context of criminal proceedings, including the pre-trial, sentencing and any appeal phases, until the final conclusion of the proceedings.</i></p>	<p>10. The right to interpretation and translation for those who do not understand the language of the proceedings are enshrined in Article 6 of the ECHR, <i>as interpreted by</i> the case law of the European Court of Human Rights. The provisions of this Directive facilitate the application of those rights in practice, <i>with a view to safeguarding the right to fair proceedings.</i></p>	<p>As discussed in the meeting on 25 March, the amendment could be accepted subject to the following redrafting (reference to the Charter is not anymore necessary in view of new recital -1):</p> <p>8. The rights to interpretation and to translation for those who do not understand the language of the proceedings are enshrined in Article 6 of the ECHR, <i>as interpreted by</i> the case law of the European Court of Human Rights. The provisions of this Directive facilitate the application of those rights in practice. <i>To this end, this Directive intends to ensure the rights of a suspected or accused person to interpretation and to translation in criminal proceedings with a view to safeguarding that person's right to fair proceedings.</i></p>

MEMBER STATES' INITIATIVE	LIBE DRAFT AMENDMENTS	COMMISSION PROPOSAL (for reference)	DRAFT COUNCIL POSITION
Amendment 49 Recital 9			
<p>9. The rights provided for in this Directive should also apply to proceedings for the execution of a European Arrest Warrant <i>within the limits provided for by this Directive</i>. Executing Members States should provide, and bear the costs of, interpretation and translation <i>for the benefit of the</i> requested person who does not understand or speak the language of the proceedings.</p>	<p>(9) The rights provided for in this Directive should also apply, <i>as necessary accompanying measures, to</i> the execution of a European Arrest Warrant within the limits provided for by this Directive. Executing Members States should provide, and bear the costs of, interpretation and translation for the benefit of the requested person who does not understand or speak the language of the proceedings.</p>	<p>11. The rights provided for in this Directive should also apply to proceedings for the execution of a European Arrest Warrant. Executing Members States should provide, and bear the costs <i>for</i>, interpretation and translation <i>for any</i> requested person who does not understand or speak the language of the proceedings.</p>	<p>Amendment acceptable, subject to the following redrafting:</p> <p>9. The rights provided for in this Directive should also apply, <i>as necessary accompanying measures, to</i> the execution of a European Arrest Warrant within the limits provided for by this Directive. Executing Members States should provide, and bear the costs <i>for</i>, interpretation and translation for the benefit of the requested person who does not understand or speak the language of the proceedings.</p>

MEMBER STATES' INITIATIVE	LIBE DRAFT AMENDMENTS	COMMISSION PROPOSAL (for reference)	DRAFT COUNCIL POSITION
Compromise amendment 10 Recital 10			
<p>10. <i>The provisions of this Directive should ensure that the rights of the suspected or accused person who does not speak or understand the language of the proceedings or accusations brought against him and to understand the proceedings in order to be able to exercise his rights are protected by providing free and accurate linguistic assistance.</i> The suspected or accused person should be able, <i>inter alia</i>, to explain to his legal counsel his version of the events, point out any statements with which he disagrees and make his legal counsel aware of any facts that should be put forward in the defence. It is recalled in this connection that the provisions of this Directive set minimum rules. Member States may extend the rights set out in this Directive in order to provide a higher level of protection also in situations not explicitly dealt with in this Directive. The level of protection should never fall below the standards provided by the ECHR, as interpreted in the case-law of the European Court of Human Rights.</p>	<p>(10) The provisions of this Directive should ensure that the rights of the suspect who does not speak or understand the language of the proceedings to understand the accusations brought against him and to understand the proceedings in order to be able to exercise his rights are protected by providing free, high-quality and accurate linguistic assistance <i>with adequate time and facilities to safeguard the fairness of the proceedings. This assistance should cover communications between the suspect and his lawyer and written material necessary in order to ensure he is able to understand the case against him and exercise his rights and to safeguard the fairness of the proceedings. It should also cover, where relevant, the rules of detention including how to seek information and make complaints, and official contacts between the detaining authorities and the suspect.</i></p>	<p>(see recitals 12, 18 and 20)</p>	<p>It is suggested to accept the amendment in the following form:</p> <p><i>10. This Directive should ensure that there is free and accurate linguistic assistance, allowing suspected and accused persons who do not speak or understand the language of the criminal proceedings to fully exercise their rights and safeguard the fairness of the proceedings.</i></p> <p>NB: see also new recitals 10a and 16c below.</p>

MEMBER STATES' INITIATIVE	LIBE DRAFT AMENDMENTS	COMMISSION PROPOSAL (for reference)	DRAFT COUNCIL POSITION
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Amendment 50 Recital 10a (new)			
	<i>(10a) The suspected or accused person should be able, inter alia, to explain his version of the events to his legal counsel, point out any statements with which he disagrees and make his legal counsel aware of any facts that should be put forward in his defence.</i>	12. The suspected or accused person should be able, <i>inter alia</i> , to explain <i>his version of the events to his legal counsel</i> , point out any statements with which he disagrees and make his legal counsel aware of any facts that should be put forward in his defence.	It is suggested to accept this amendment (text was already contained in recital 10 of the Member States' initiative).

MEMBER STATES' INITIATIVE	LIBE DRAFT AMENDMENTS	COMMISSION PROPOSAL (for reference)	DRAFT COUNCIL POSITION
Amendment 5 Recital 11			
<p>11. Member States should not be obliged to ensure interpretation of communication between the suspected or accused person and his legal counsel in cases where they can effectively communicate in the same language. Neither should the Member States be obliged to ensure interpretation of such communication where the right to interpretation is clearly used for purposes other than exercising fair trial rights in the proceedings concerned.</p>	<p><i>(11) The provisions of this Directive should in the shortest possible time be set within a comprehensive legal framework of procedural safeguards which should include: proper respect for the principle of the presumption of innocence; the right to equal treatment in the granting of bail; the right to legal advice and if necessary free legal assistance; the right to information about rights (Letter of Rights); the right to adduce evidence; the right to specific assistance for vulnerable suspects; the protection of juvenile suspects; the right to communicate with consular authorities and third parties; minimum standards for detention and accessible mechanisms of redress.</i></p>		<p>MS are strongly encouraged to reflect on the necessity of maintaining recital 11 in the text.</p> <p>It is suggested to invite the Parliament to withdraw its amendment presenting a new text, in the light of the suggestions for new recitals 7a-1 and 7a-2.</p> <p>NB: If these new recitals are accepted, it seems appropriate that the second visa of the draft Directive be deleted. Parliament could be invited to table an amendment to that effect.</p>

MEMBER STATES' INITIATIVE	LIBE DRAFT AMENDMENTS	COMMISSION PROPOSAL (for reference)	DRAFT COUNCIL POSITION
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Amendment 51 Recital 12			
<p>12. The finding that there is no need for interpretation or translation should be subject to the possibility of review, <i>in accordance with national law. Such review may be carried out, for example, through a specific complaint procedure, or in the context of an ordinary appeal procedure against decisions on the merits.</i></p>	<p>(12) The finding that there is no need for interpretation or translation should be subject to <i>appeal. Member States should ensure that the suspect or accused person has the right to challenge a decision finding that there is no need for interpretation including cases where interpretation or translation is so deficient that it amounts to an absence of interpretation.</i></p>	<p>13. The finding that there is no need for interpretation or translation should be subject to the possibility of review. <i>Member States should ensure that the suspect or accused person has the right to challenge a decision finding that there is no need for interpretation including cases where interpretation or translation is so deficient that it amounts to an absence of interpretation.</i></p>	<p>As discussed in the meeting on 25 March, the following alternative drafting could be proposed:</p> <p>12. The finding that there is no need for interpretation or translation should be subject to the possibility of review <i>or appeal, in accordance with procedures in national law.</i></p>



MEMBER STATES' INITIATIVE	LIBE DRAFT AMENDMENTS	COMMISSION PROPOSAL (for reference)	DRAFT COUNCIL POSITION
<p style="text-align: center;">Amendment 7 Recital 12 a (new)</p>			
	<p><i>(12a) Member States shall ensure that training is offered for judges, prosecutors, lawyers, police and relevant court personnel in order for them to be able to assess the suspect's linguistic needs, ensure his ability to understand the proceedings, and assess the quality of interpretation and translation.</i></p>	<p>16. The effectiveness of interpretation and translation should be ensured by various means such as offering training to judges, lawyers, prosecutors, police and other relevant court staff so as to raise awareness of the situation of those needing and those providing interpretation.</p>	<p>It is suggested to offer the following alternative wording, inspired by point 10 of the draft Resolution (see also in relation to amendment 33):</p> <p><i>12a. Without prejudice to judicial independence or different judicial organisations in the European Union, Member States should encourage those responsible for the training of judges, prosecutors and judicial staff involved in criminal proceedings to give special attention to the particularities of communicating with the assistance of an interpreter so as to ensure efficient and effective communication.</i></p>

MEMBER STATES' INITIATIVE	LIBE DRAFT AMENDMENTS	COMMISSION PROPOSAL (for reference)	DRAFT COUNCIL POSITION
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Compromise amendment 11 and amendment 56 Recital 13			
<p>13. Appropriate assistance should be provided also to suspected or accused persons suffering from hearing impediments.</p>	<p>13. Appropriate assistance should be provided also to suspected or accused persons suffering from <i>physical or learning disabilities which affect their ability to communicate effectively, such as hearing or speech impediments; in cases where there is doubt as to the need for such assistance, the hearing or speech impediment should be confirmed by a medical examination.</i></p>		<p>The second part of this amendment ("in cases where ... medical examination") raises all kind of practical problems. It is suggested not to accept it.</p> <p>As regards the first part, at the meeting on 25 March it was agreed to suggest to keep the recital as it currently stands and to further deal with this issue in the context of measure E.</p> <p>Member States are however invited to consider whether the amendment could be adopted subject to any redrafting.</p>

MEMBER STATES' INITIATIVE	LIBE DRAFT AMENDMENTS	COMMISSION PROPOSAL (for reference)	DRAFT COUNCIL POSITION
Amendment 9 Recital 14			
<p>14. The duty of care towards suspected or accused persons who are in a potentially weak position, in particular because of physical impairments which affect their ability to communicate effectively, underpins a fair administration of justice. <b>The prosecution, law enforcement and judicial authorities</b> should therefore ensure that these persons are able to exercise effectively the rights provided for in this Directive, <b>for example by paying attention to</b> any potential vulnerability that affects their ability to follow the proceedings and make themselves understood, and by taking appropriate steps to <b>ensure</b> these rights.</p>	<p>(14) The duty of care towards <b>suspects unable to understand or follow the proceedings</b> underpins a fair administration of justice. The prosecution, law enforcement and judicial authorities should therefore ensure that <b>suspects in a potentially weak position</b> are able to exercise effectively <b>their rights. Those authorities should be aware of any potential vulnerability and take</b> appropriate steps to ensure these rights. <b>This should always be the case where a suspect is a minor or suffers from disabilities which impair his active participation in proceedings.</b></p>	<p>13. The duty of care towards suspects or accused persons who are in a potentially weak position, in particular because of physical impairments which affect their ability to communicate effectively, underpins a fair administration of justice. <b>The competent authorities</b> should therefore ensure that these persons are able effectively to exercise the rights provided for under this Directive, <b>by being aware of</b> any potential vulnerability that affects their ability to follow the proceedings and to make themselves understood and by taking appropriate steps to <b>safeguard</b> these rights.</p>	<p>- It could be suggested to Parliament to deal with this issue in the context of measure E.</p> <p>- <i>A titre subsidiaire</i>, the text set out in the Commission proposal may be an adequate way to address the issue.</p>

MEMBER STATES' INITIATIVE	LIBE DRAFT AMENDMENTS	COMMISSION PROPOSAL (for reference)	DRAFT COUNCIL POSITION
Amendment 10 Recital 14 a (new)			
	<p><i>(14a) This Directive should be evaluated in the light of the practical experience gained. If appropriate, it should be amended so as to improve the safeguards which it lays down.</i></p>		<p>It is suggested to accept this amendment subject to the following redrafting:</p> <p><i>(14a) This Directive should be evaluated in the light of the practical experience gained. If appropriate, it should be amended in accordance with the applicable procedure so as to improve the safeguards which it lays down.</i></p>

MEMBER STATES' INITIATIVE	LIBE DRAFT AMENDMENTS	COMMISSION PROPOSAL (for reference)	DRAFT COUNCIL POSITION
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Compromise amendment 12 Recital 15			
<p>15. <i>Safeguarding</i> the fairness of the proceedings requires that essential documents, or at least the <i>important</i> passages of such documents, be translated for the benefit of the suspected or accused person. <i>It is up to the authorities of the Member States to decide which documents should be translated, in accordance with national law. Some documents should always be considered essential documents that should be translated, such as the decision depriving a person of his liberty, the charge or indictment and any judgment.</i></p>	<p>(15) <i>The safeguarding of the fairness of the proceedings requires that essential documents necessary in order to ensure the suspect is able to understand the case against him and exercise his rights should be translated. Essential documents that should always be translated include any decision depriving a person of his liberty, the charge or indictment, key documentary evidence, any judgment and written legal advice from the suspect's lawyer. Where relevant the rules of detention including how to seek information and make complaints should also be translated where such documents exist.</i></p>	<p>15. The fairness of the proceedings requires that essential documents <i>should</i> be translated for the benefit of the suspect or accused person. <i>Essential documents that should be translated include any decision depriving a person of his liberty, the charge or indictment, key documentary evidence and any judgment.</i></p>	<p>The position on this amendment can best be determined once the position on Article 3(2) has been determined.</p> <p>NB: on a general note, it can be observed that attention should be paid to possible duplication of texts in the operative part and texts in the recitals: the latter should provide added value, not simply a copy of texts of the Articles.</p>

MEMBER STATES' INITIATIVE	LIBE DRAFT AMENDMENTS	COMMISSION PROPOSAL (for reference)	DRAFT COUNCIL POSITION
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Amendments 12 and 58 Recital 16			
<p>16. A waiver of the right to written translation of documents should be unequivocal, <i>with minimum safeguards, and should not run counter to any important public interest.</i></p>	<p>(16) <i>Any</i> waiver of the right to translation of <i>written material</i> should be <i>subject to the requirements that the suspect has received legal advice and that the waiver was unequivocal, was given in writing once legal advice has been taken, and does not run counter to any important public interest.</i></p>	<p>16. A waiver of the right to written translation of documents should be unequivocal <i>and only be valid after legal advice has been received.</i></p>	<p>As discussed on 25 March 2010, the Council suggests the following alternative draft (see also amendment 31):</p> <p>16. <i>Any</i> waiver of the right to written translation of documents should be <i>subject to the requirements that the suspected or accused person has full knowledge of the consequences of his waiver and that the waiver was unequivocal and given voluntarily.</i></p>

MEMBER STATES' INITIATIVE	LIBE DRAFT AMENDMENTS	COMMISSION PROPOSAL (for reference)	DRAFT COUNCIL POSITION
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	<p>Amendments 59 and 61 Recital 16a (new)</p> <p><i>(16a) Member States should strive for a high level of qualification for interpreters and translators employed in criminal proceedings, including for those assisting suspected or accused persons with a physical or mental impairment, in order to ensure an adequate standard of interpretation and translation and guarantee the fairness of proceedings. In addition to general language skills, these translators and interpreters should have specialist knowledge of legal terminology. The qualification of interpreters and translators employed in criminal proceedings should be verified by a formal degree or any similar proof of proficiency in the language concerned and attested through accreditation or certification. Member States are encouraged to institute a system of Continuous Professional Development, so that legal translators and interpreters can keep their skills up to date.</i></p>		<p>It is suggested to accept this amendment, which reflects points 5 and 7 of the Resolution (*), with the following modifications: .</p> <ul style="list-style-type: none"> <li>- At the end of the third sentence, add <i>"for example" before "through accreditation or certification"</i>;</li> <li>- As regards the last sentence, it is suggested to modify it slightly as follows:</li> </ul> <p><i>Member States are encouraged to institute a system of continuous professional development, so that (...) translators and interpreters employed in criminal proceedings can keep their skills up to date.</i></p> <p>(*) With these and other transfers from the Resolution into the (recitals of the) Directive, the Resolution may become obsolete.</p>
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MEMBER STATES' INITIATIVE	LIBE DRAFT AMENDMENTS	COMMISSION PROPOSAL (for reference)	DRAFT COUNCIL POSITION
	<p>Amendment 60 and 62 Recital 16b (new)</p> <p><i>(16b) Member States should ensure that there is a national register, or registers, of qualified interpreters and translators to be employed in criminal proceedings. The register or registers should be kept up to date so as to reflect, inter alia, the status of the interpreter's or translator's qualifications, without prejudice to the application of rules on the protection of individuals with regard to the processing of personal data. Member States are encouraged to make their national registers accessible to competent authorities of other Member States. In this context, particular attention should be paid to the aim of facilitating the interconnection of databases for legal translators and interpreters, as envisaged in the European e-Justice action plan of 27 November 2008. Therefore, Member States should ensure that a mechanism is in place to ensure quality control of the translation and interpretation used in criminal proceedings.</i></p>		<p>It is suggested to accept this amendment, which reflects points 11-13 of the Resolution, except for the last phrase ("Therefore ... proceedings"), which has been added later and fits badly.</p>



MEMBER STATES' INITIATIVE	LIBE DRAFT AMENDMENTS	COMMISSION PROPOSAL (for reference)	DRAFT COUNCIL POSITION
<p align="center">Compromise amendment 13 Recital 16c (new)</p>			
	<p><i>16(c) This Directive should set minimum rules. Member States should be able to extend the rights set out in this Directive in order to provide a higher level of protection also in situations not explicitly dealt with in this Directive. The level of protection should never go below the standards provided by the European Convention on Human Rights or the EU Charter of Fundamental Rights as interpreted in the case-law of the European Court of Justice respectively.</i></p>	<p>18. This Directive should set minimum rules. Member States should be able to extend the rights set out in this Directive in order to provide a higher level of protection also in situations not explicitly dealt with in this Directive. The level of protection should never go below the standards provided by the European Convention on Human Rights, as interpreted in the case-law of the European Court of Human Rights.</p>	<p>It is suggested to accept this amendment (text was already contained in recital 10 of the Member States' initiative).</p>

MEMBER STATES' INITIATIVE	LIBE DRAFT AMENDMENTS	COMMISSION PROPOSAL (for reference)	DRAFT COUNCIL POSITION
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Amendment 64  
Recital 17

<p>17. This Directive respects <i>the</i> fundamental rights and observes the principles recognised by the Charter of Fundamental Rights of the European Union. In particular, this Directive seeks to promote the right to liberty, the right to a fair trial and the right of defence.</p>	<p>(17) This Directive respects the fundamental rights and observes the principles recognised by the Charter of Fundamental Rights of the European Union. In particular, this Directive seeks to promote the right to liberty, the right to a fair trial and the right of defence <i>and has to be implemented accordingly.</i></p>	<p>19. This Directive respects fundamental rights and observes the principles recognised by the Charter of Fundamental Rights of the European Union. In particular, this Directive seeks to promote the right to liberty, the right to a fair trial and the rights of the defence <i>and has to be implemented accordingly.</i></p>	<p>It is suggested to accept this amendment as it stands.</p>
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MEMBER STATES' INITIATIVE	LIBE DRAFT AMENDMENTS	COMMISSION PROPOSAL (for reference)	DRAFT COUNCIL POSITION
Amendment 13 Recital 18			
<p>18. Member States should ensure that the provisions of this Directive, where they correspond to rights guaranteed by the ECHR, are implemented consistently with those of the ECHR as <b>elaborated upon</b> by the relevant case-law of the European Court of Human Rights.</p>	<p>(18) The provisions of this Directive <b>which</b> correspond to rights guaranteed by the <b>Charter shall be interpreted and</b> implemented consistently with those <b>rights</b>, as <b>developed in</b> the relevant case-law of the European Court of Human Rights <b>and the Court of Justice of the European Union.</b></p>	<p>20. Member States should ensure that the provisions of this Directive, <b>which</b> correspond to rights guaranteed by <b>the European Convention on Human Rights</b> are implemented consistently with <b>them as well as with</b> the relevant case-law of the European Court of Human Rights.</p>	<p>As discussed in the meeting of 25 March, it is suggested to accept this amendment subject to the following redrafting:</p> <p>(18) The provisions of this Directive <b>which</b> correspond to rights guaranteed by the ECHR <b>or by the Charter should be interpreted and</b> implemented consistently with those <b>rights</b>, as <b>developed in</b> the relevant case-law of the European Court of Human Rights <b>and the Court of Justice of the European Union.</b></p>

MEMBER STATES' INITIATIVE	LIBE DRAFT AMENDMENTS	COMMISSION PROPOSAL (for reference)	DRAFT COUNCIL POSITION
<p>19. Since the <i>objective of this Directive, that is</i>, achieving common minimum standards, cannot be <i>sufficiently</i> achieved by the Member States <i>and can therefore, by reason of the scale and effects of the proposed action, be better</i> achieved at Union level, <i>the Union</i> may adopt measures in accordance with the principle of subsidiarity as referred to <i>and defined</i> in Article 5 of the Treaty on European Union. In accordance with the principle of proportionality, as set out in that Article, this Directive does not <i>go beyond</i> what is necessary in order to achieve that objective,</p>		<p>21. Since the <i>aim of</i> achieving common minimum standards cannot be achieved by Member States <i>acting unilaterally, neither at central nor at regional or local level, and can only be</i> achieved at Union level, <i>the European Parliament and the Council</i> may adopt measures in accordance with the principle of subsidiarity as referred to in Article 5 of the Treaty on European Union. In accordance with the principle of proportionality, as set out in the same Article, this Directive does not <i>exceed</i> what is necessary in order to achieve that objective.</p>	

MEMBER STATES' INITIATIVE	LIBE DRAFT AMENDMENTS	COMMISSION PROPOSAL (for reference)	DRAFT COUNCIL POSITION
	<p>Amendment 67 Recital 19a</p> <p><i>(19a) In accordance with Articles 1, 2, 3 and 4 of Protocol on the position of United Kingdom and Ireland in respect of the area of freedom, security and justice, annexed to the Treaty on the Functioning of the European Union, the United Kingdom has notified its wish to participate in the adoption and application of this Directive. [Without prejudice to Article 4 of the Protocol on the position of the United Kingdom and Ireland in respect of the area of freedom, security and justice, Ireland will not participate in the adoption and will not be subject to its application]. In accordance with Articles 1 and 2 of Protocol on the Functioning of the European Union, Denmark is not taking part in the adoption of this Directive and is therefore not bound by it or subject to its application.</i></p>	<p>In accordance with Articles 1, 2, 3 and 4 of Protocol on the position of United Kingdom and Ireland in respect of the area of freedom, security and justice, annexed to the Treaty on the Functioning of the European Union, the United Kingdom and Ireland have notified of their wish to participate in the adoption and application of this Directive] / [Without prejudice to Article 4 of Protocol on the position of the United Kingdom and Ireland in respect of the area of freedom, security and justice, the United Kingdom and Ireland will not participate in the adoption of this Directive and will not be bound by or be subject to its application]. In accordance with Articles 1 and 2 of Protocol on the position of Denmark annexed to the Treaty on the Functioning of the European Union, Denmark is not taking part in the adoption of this Directive and is therefore not bound by it or subject to its application</p>	<p>It is suggested to accept this amendment using the following drafting:</p> <p><i>19a. In accordance with Articles 1, 2, 3 and 4 of Protocol on the position of United Kingdom and Ireland in respect of the area of freedom, security and justice, annexed to the Treaty on the Functioning of the European Union, Ireland and the United Kingdom have notified their wish to participate in the adoption and application of this Directive. In accordance with Articles 1 and 2 of Protocol on the position of Denmark annexed to the Treaty on the Functioning of the European Union, Denmark is not taking part in the adoption of this Directive and is therefore not bound by it or subject to its application.</i></p>

MEMBER STATES' INITIATIVE	LIBE DRAFT AMENDMENTS	COMMISSION PROPOSAL (for reference)	DRAFT COUNCIL POSITION
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Articles			
1(1) This Directive lays down rules concerning the rights to interpretation and translation in criminal proceedings and proceedings for the execution of a European Arrest Warrant.		1(1) This Directive lays down rules concerning the rights to interpretation and translation in criminal proceedings and proceedings for the execution of a European Arrest Warrant.	

Amendment 15 Article 1 - paragraph 1 a (new)			
	<i>1(1a) For the purpose of this Directive, the term "suspect or accused person" should be read as arrested, prosecuted or convicted awaiting sentence in connection with a criminal offence, as long as the criminal proceedings to which the right to interpretation and translation applies have not been finally concluded.</i>		As discussed in the meeting on 25 March, the Council could suggest to address the concerns by Parliament through the alternative draft presented in relation to Article 1(2).

MEMBER STATES' INITIATIVE	LIBE DRAFT AMENDMENTS	COMMISSION PROPOSAL (for reference)	DRAFT COUNCIL POSITION
Amendment 16 Article 1 - paragraph 2			
<p>1(2). <i>Those rights apply to any person from the time that person is made aware by the competent authorities of a Member State that he is suspected or accused of having committed a criminal offence until the conclusion of the proceedings, which is understood to mean the final determination of the question whether the suspected or accused person has committed the offence.</i></p>	<p>1(2) Those rights apply to any person from the time that person is questioned or arrested by the authorities of a Member State in connection with a criminal offence or otherwise becomes aware that he is under suspicion until the final conclusion of the proceedings, including sentencing and the resolution of any appeal, and during detention to all official contacts between the detaining authorities and the detainee.</p>	<p>1(2) <i>Member States should ensure that the rights referred to in paragraph 1 apply to any person from the time that person is informed by the competent authorities of a Member State that he is suspected of having committed a criminal offence until the conclusion of the proceedings.</i></p>	<p>As discussed at the meeting on 25 March, the Council could offer the following alternative drafting:</p> <p>1(2). <i>Those rights apply to any person from the time that person is made aware by the competent authorities of a Member State that he is suspected or accused of having committed a criminal offence until the conclusion of the proceedings, which is understood to mean the final determination of the question whether the suspected or accused person has committed the offence, including sentencing and the resolution of any appeal.</i></p>

MEMBER STATES' INITIATIVE	LIBE DRAFT AMENDMENTS	COMMISSION PROPOSAL (for reference)	DRAFT COUNCIL POSITION
Amendment 17 Article 1- paragraph 2 a (new)			
	<p><i>1(2a) The suspect shall be informed of the rights laid down in this Directive without delay. This information shall be given in written form. Suspects with a visual impairment or reading disability should be notified orally, in a language which they understand, of these rights.</i></p>		<p>As discussed at the meeting on 25 March, the Council prefers addressing this issue in the context of measures B and E of the Roadmap, so as to avoid any conflict between the legislative instruments.</p>



MEMBER STATES' INITIATIVE	LIBE DRAFT AMENDMENTS	COMMISSION PROPOSAL (for reference)	DRAFT COUNCIL POSITION
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	<p style="text-align: center;">Amendment 18 Article 1 - paragraph 2 b (new)</p> <p><i>1(2b) The provisions of this Directive which correspond to rights guaranteed by the ECHR or by the Charter shall be interpreted and implemented consistently with those rights, as developed in the relevant case-law of the European Court of Human Rights and the Court of Justice of the European Union.</i></p>		<p>As discussed on 25 March, the Council could suggest to the European Parliament that this is typical recital language and that recital 18 therefore may suffice.</p>
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MEMBER STATES' INITIATIVE	LIBE DRAFT AMENDMENTS	COMMISSION PROPOSAL (for reference)	DRAFT COUNCIL POSITION
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Amendment 19 Article 1 - paragraph 3			
1(3). <i>This Directive shall not apply to proceedings which may lead to sanctions being imposed by an authority other than a criminal court, as long as those proceedings are not pending before a court having jurisdiction in criminal matters.</i>	(deleted)		The Council would like to keep this recital in any form but is open to redrafting of the text in order to clarify it.  The delegations concerned are kindly invited to produce any alternative drafting.

MEMBER STATES' INITIATIVE	LIBE DRAFT AMENDMENTS	COMMISSION PROPOSAL (for reference)	DRAFT COUNCIL POSITION
<p>Compromise amendment 1 and amendment 72 Article 2 - paragraph 1</p>			
<p>2(1) Member States shall ensure that a <i>suspected</i> or accused person who does not understand <i>or</i> speak the language of the criminal proceedings concerned is provided with interpretation <i>into his native language or into another language that he understands, in order to safeguard his right to fair proceedings</i>. Interpretation, <i>including of communications between the suspected or accused person and his legal counsel</i>, shall be provided during <i>criminal</i> proceedings before investigative and judicial authorities, including during police questioning, during <i>all court hearings and during any necessary interim hearings, and may be provided in other situations</i>. <i>This provision does not affect rules of national law concerning the presence of a legal counsel during any stage of the criminal proceedings.</i></p>	<p>2(1) Member States shall ensure that a <i>suspected or accused person</i> who does not understand <i>and</i> speak the language of the criminal proceedings concerned is provided <i>without delay</i> with interpretation <i>of a quality sufficient to safeguard the fairness of the criminal proceedings</i>. Interpretation shall be provided during <i>those</i> proceedings before investigative and judicial authorities, including during police questioning, during <i>all necessary meetings between the suspect and his lawyer, during all court hearings and during any necessary interim hearings</i>.</p>	<p>2(1) Member States shall ensure that a <i>suspected or accused person</i> who does not understand <i>or speak the language of the criminal proceedings concerned is provided without delay with interpretation of a quality sufficient to safeguard the fairness of the proceedings</i>. Interpretation shall be provided during <i>those</i> proceedings before investigative and judicial authorities, including during police questioning, during <i>all necessary meetings between the suspect and his lawyer, during all court hearings and during any necessary interim hearings</i>.</p>	<p>In order to address this amendment, the combination of the following 4 elements is suggested:</p> <ul style="list-style-type: none"> <li>- to accept the amendment, redrafted as follows:</li> </ul> <p><i>2(1) Member States shall ensure that a suspected or accused person who does not understand or speak the language of the criminal proceedings concerned is provided without delay with interpretation of a quality sufficient to safeguard the fairness of the proceedings.</i> <i>Interpretation shall be provided during criminal proceedings before investigative and judicial authorities, including during police questioning, and during all court hearings and during any necessary interim hearings. This provision does not affect rules of national law concerning the presence of a legal counsel during any stage of the criminal proceedings.</i></p>

MEMBER STATES' INITIATIVE	LIBE DRAFT AMENDMENTS	COMMISSION PROPOSAL (for reference)	DRAFT COUNCIL POSITION
			<p>- suggest the insertion of a new recital in the text, worded as follows:</p> <p><i>"This Directive does not affect rules of national law concerning the presence of a legal counsel during any stage of the criminal proceedings."</i></p> <p>- suggest the insertion of a new recital in the text, worded as follows:</p> <p><i>"Interpretation and translation in application of this Directive should be provided in the native language of the suspected or accused person or in any other language that he understands and that allows him to fully exercise his rights, while guaranteeing the fairness of the proceedings."</i></p> <p>- ask for the insertion of a new Article 2(1a) in the text, see below.</p>

MEMBER STATES' INITIATIVE	LIBE DRAFT AMENDMENTS	COMMISSION PROPOSAL (for reference)	DRAFT COUNCIL POSITION
Suggestion for new amendment			
		<p>2(2) Member States shall ensure that, where necessary, legal advice received throughout the criminal proceedings is interpreted for the suspect.</p>	<p>It is suggested to invite the Parliament to adopt a new amendment for Article 2(1a), worded as follows:</p> <p><i>2(1a) Member States shall ensure that, where necessary for the purpose of ensuring the fairness of the proceedings, communication between the suspected or accused person and his/her legal counsel in direct connection with his/her participation in the proceedings is interpreted.</i></p>

MEMBER STATES' INITIATIVE	LIBE DRAFT AMENDMENTS	COMMISSION PROPOSAL (for reference)	DRAFT COUNCIL POSITION
<p>Compromise amendment 2 and amendment 76 Article 2 - paragraph 2</p>			
<p>2(2). <i>Member States shall ensure that a person with a hearing impediment receives interpretation assistance, if appropriate for that person.</i></p>	<p>2(2) <i>Appropriate assistance should be provided also to suspected or accused persons suffering from physical or learning disabilities which affect their ability to communicate effectively, such as hearing or speech impediments. In cases where there is doubt as to the need for such assistance, the hearing or speech impediment should be confirmed by a medical examination.</i></p>	<p>2(5) <i>The right to interpretation includes assistance of persons with hearing or speech impediments.</i></p>	<p>[See also the comments in relation to recital 13]</p> <p>The second sentence of this amendment ("In cases where ... medical examination") raises all kind of practical problems. It is suggested not to accept it.</p> <p>As regards the first sentence, at the meeting on 25 March it was agreed to suggest to keep the text as it currently stands and to further deal with this issue in the context of measure E.</p> <p>Member States are however invited to consider whether the amendment could be adopted subject to any redrafting.</p>

MEMBER STATES' INITIATIVE	LIBE DRAFT AMENDMENTS	COMMISSION PROPOSAL (for reference)	DRAFT COUNCIL POSITION
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Amendment 22 Article 2 - paragraph 3			
<p>2(3). Member States shall ensure that <i>it is verified in any appropriate manner, including by consulting the suspected</i> or accused person, <i>whether he</i> understands and speaks the language of the criminal proceedings <i>and needs the assistance of an interpreter.</i></p>	<p>2(3) Member States shall ensure that <i>procedures are in place to ascertain whether the suspect</i> understands and speaks the language of the criminal proceedings and needs the assistance of an interpreter.</p>	<p>2(3) Member States shall ensure that <i>a procedure is in place to ascertain whether the suspect</i> or accused person understands and speaks the language of the criminal proceedings.</p>	<p>It is suggested</p> <ul style="list-style-type: none"> <li>- to accept the amendment subject to the following redrafting:</li> </ul> <p>2(3) Member States shall ensure that <i>a procedure is in place to ascertain whether the suspected</i> or accused person understands and speaks the language of the criminal proceedings <i>and needs the assistance of an interpreter.</i></p> <p><i>and</i></p> <ul style="list-style-type: none"> <li>- to suggest the insertion in the text of a new recital, worded as follows:</li> </ul> <p>"Member States should ensure that there is a procedure by which it is verified in any appropriate manner, leaving no doubt, whether this person understands and speaks the language of the criminal proceedings and whether he needs the assistance of an interpreter."</p>

MEMBER STATES' INITIATIVE	LIBE DRAFT AMENDMENTS	COMMISSION PROPOSAL (for reference)	DRAFT COUNCIL POSITION
Compromise amendment 3			
Article 2 - paragraph 4			
<p>2(4) Member States shall ensure that <i>at some stage in the proceedings, in accordance with national law, there is the possibility of a review of a finding that there is no need for interpretation. Such review does not entail the obligation for Member States to provide for a separate mechanism in which the sole ground for review is the challenging of such findings.</i></p>	<p>2(4) Member States shall ensure that <i>at every stage of the proceedings there is a right of appeal against a decision that there is no need for interpretation as well as a mechanism for complaints on the provision or quality of interpretation and an opportunity to secure a replacement interpreter.</i></p>	<p>2(4) Member States shall ensure that <i>the suspect or accused person has the right to challenge a decision finding that there is no need for interpretation.</i></p>	<p>It is suggested to accept the amendment subject to the following redrafting (see also point 3(4)):</p> <p>2(4) Member States shall ensure that, <i>in accordance with national law, the suspect or accused person has the right to challenge a decision finding that there is no need for interpretation or to challenge the quality of interpretation.</i></p>
<p>2(5) <i>In proceedings for the execution of a European Arrest Warrant, the executing Member State shall ensure that its competent authorities provide any person subject to such proceedings who does not understand or speak the language of the proceedings, with interpretation in accordance with this Article.</i></p>		<p>2(6) <i>With regard to proceedings for the execution of a European Arrest Warrant, Member States shall ensure that any person subject to such proceedings who does not understand and speak the language of the proceedings shall be provided with interpretation during those proceedings.</i></p>	



MEMBER STATES' INITIATIVE	LIBE DRAFT AMENDMENTS	COMMISSION PROPOSAL (for reference)	DRAFT COUNCIL POSITION
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Amendment 24 Article 2 - paragraph 5 a (new)			
	<p><i>2(5a) Technology such as video links, telephone or internet access may be employed as a last resort when the personal attendance of an interpreter is impossible, such as when a requirement arises at very short notice, and where its use does not jeopardise the right to a fair trial. This option should not be used for proceedings taking place in court.</i></p>		<p>The Council would recommend that this amendment be withdrawn, as the text is restrictive in scope and may be contrary to existing policies promoting the use of modern technology in criminal proceedings.</p>

MEMBER STATES' INITIATIVE	LIBE DRAFT AMENDMENTS	COMMISSION PROPOSAL (for reference)	DRAFT COUNCIL POSITION
	<p>3(1). Member States shall ensure that a <i>suspected or accused person</i> who does not understand the language of the criminal proceedings concerned is provided with a <i>translation, into his native language or into another language that he understands, of all documents which are essential in order to safeguard his right to fair proceedings, or at least the important passages of such documents, provided that the person concerned has the right of access to the documents concerned under national law.</i></p>	<p>Compromise amendment 4 Article 3 - paragraph 1</p> <p>3(1) Member States shall ensure that a <i>suspect</i> who does not understand the language of the criminal proceedings concerned is provided with <i>written translations</i> of all <i>essential</i> documents of a <i>quality sufficient</i> to safeguard <i>the fairness of the criminal proceedings.</i></p>	<p>It is suggested</p> <p>- to accept the amendment, subject to the following redrafting:</p> <p>3(1) Member States shall ensure that a suspected or accused person who does not understand the language of the criminal proceedings concerned is provided within a reasonable delay with written translations of all essential documents, or at least the important passages of such documents, of a quality sufficient to ensure that he is able to exercise his rights and to safeguard the fairness of the criminal proceedings.</p> <p><i>and</i></p> <p>- to ask for the insertion in the text of the following recital:</p> <p>"This Directive does not affect rules of national law concerning the right of suspected and accused persons to have access to documents."</p>

MEMBER STATES' INITIATIVE	LIBE DRAFT AMENDMENTS	COMMISSION PROPOSAL (for reference)	DRAFT COUNCIL POSITION
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Compromise amendment 5 Article 3 - paragraph 2			
<p>3(2) <i>The competent authorities shall decide which are the essential documents to be translated under paragraph 1.</i> The essential documents to be translated, <i>in whole or the important passages thereof</i>, shall include <i>at least detention orders or equivalent decisions</i> depriving the person of his liberty, <i>the charge or indictment and any judgment, where such documents exist.</i></p>	<p>3(2) <i>At least the decision</i> depriving a person of his liberty, <i>the charge/indictment, key documentary evidence, any judgment and written legal advice from the suspect's lawyer should be considered essential documents that should be translated. Where relevant the rules of detention, including how to seek information and make complaints, should be translated where such documents exist.</i></p>	<p>3(2) The essential documents to be translated shall include <i>the detention order</i> depriving the person of his liberty, <i>the charge/indictment, essential documentary evidence and the judgment.</i></p>	<p>It is suggested to accept the amendment, redrafted as follows:  3(2) The competent judicial authorities shall decide which are the essential documents to be translated under paragraph 1. At least decisions depriving a person of his liberty, the charge/indictment, key documentary evidence, any judgment [and written legal advice from the suspect's lawyer] shall be considered to be essential documents that should be translated in whole or the important passages thereof. When falling within the scope of this Directive, the rules of detention, where they exist, including how to seek information and make complaints, are considered to be essential documents that should be translated.</p>

MEMBER STATES' INITIATIVE	LIBE DRAFT AMENDMENTS	COMMISSION PROPOSAL (for reference)	DRAFT COUNCIL POSITION
Amendment 27 Article 3 - paragraph 3			
3(3). <i>The suspected or accused person, or his legal counsel, may submit a reasoned request for translation of further documents which are necessary for the effective exercise of the right of defence.</i>	3(3) The <i>suspect</i> or his <i>lawyer</i> may submit a reasoned request for translation of further documents.	3(3) <i>The suspect or his lawyer</i> may submit a reasoned request for translation of further documents, <i>including written legal advice from the suspect's lawyer.</i>	The Council suggests the following alternative text:  3(3) The <i>suspected or accused person</i> or his <i>lawyer</i> may submit a reasoned request for translation of further documents.  NB: 'lawyer' or 'legal counsel' are both acceptable, as long as the use in the text is consistent.

MEMBER STATES' INITIATIVE	LIBE DRAFT AMENDMENTS	COMMISSION PROPOSAL (for reference)	DRAFT COUNCIL POSITION
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Amendment 28 Article 3 - paragraph 3 a (new)			
	<p><i>3(3a) An indexed and fully referenced summary of the prosecution evidence should be provided in translation well before the start of the trial, in order to enable the defendant to consider with his lawyer whether a formal request for a translation of any particular piece of prosecution evidence referred to in the summary should be made.</i></p>		<p>The Council considers that this amendment poses a problem, since an indexed and fully referenced summary is generally not made available in strictly national proceedings and since doing so could imply long delays and high costs.</p> <p>The Parliament is invited to withdraw the amendment.</p>

MEMBER STATES' INITIATIVE	LIBE DRAFT AMENDMENTS	COMMISSION PROPOSAL (for reference)	DRAFT COUNCIL POSITION
Compromise amendment 6 Article 3 - paragraph 4			
<p>3(4). Member States shall ensure that <i>at some stage in the proceedings, in accordance with national law, there is the possibility of a review if translation of a document referred to in paragraphs 2 and 3 is not provided. Such review does not entail the obligation for Member States to provide for a separate mechanism in which the sole ground for review is the challenging of such finding.</i></p>	<p>3(4) Member States shall ensure that at every stage of the proceedings there is a <i>right of appeal against a decision to refuse translation of any documents referred to in paragraphs 1, 2, 3 and 3a, as well as a mechanism for complaints.</i></p>	<p>3(4) Member States shall ensure that <i>the suspect or accused person has the right to challenge a decision finding translation.</i></p>	<p>It is suggested to accept the amendment subject to the following redrafting (see also point 2.4):</p> <p>3(4) Member States shall ensure that, <i>in accordance with national law, the suspect or accused person has the right to challenge a decision finding that there is no need for translation or to challenge the quality of translation.</i></p>
<p>3(5). In proceedings for the execution of a European Arrest Warrant, the executing Member State shall ensure that <i>its competent authorities provide</i> any person subject to such proceedings who does not understand the language in which the European Arrest Warrant is drawn up, <i>or into which it has been translated by the issuing Member State, with a translation of that document.</i></p>		<p>3(5) <i>With regard to proceedings for the execution of a European Arrest Warrant, Member States shall ensure that any person subject to such proceedings who does not understand the language in which the European Arrest Warrant is drawn up, shall be provided with a translation of the said document.</i></p>	

MEMBER STATES' INITIATIVE	LIBE DRAFT AMENDMENTS	COMMISSION PROPOSAL (for reference)	DRAFT COUNCIL POSITION
<p>3(6). Provided that this does not affect the fairness of the proceedings, an oral translation or an oral summary of the documents referred to in this Article may, where appropriate, be provided instead of a written translation.</p>	<p>Amendment 86 Article 3 - paragraph 6</p> <p>6. <i>By way of derogation in exceptional circumstances and subject to the appeal procedure in Article 3(4), an oral translation or an oral summary of the written material referred to in this Article may be provided instead of a written translation. In such cases the Member States shall ensure that the oral translation is provided in the presence of the lawyer and does not affect the fairness of the proceedings and that a full and permanent record is kept of such oral translation or summary.</i></p>		<p>It is suggested to accept this amendment, subject to the following redrafting:</p> <p>6. <i>By way of derogation <u>from paragraphs 1-5 above, in exceptional circumstances and subject to the appeal procedure in Article 3(4)</u>, an oral translation or an oral summary of the <u>written material</u> referred to in this Article may be provided instead of a written translation. <u>In such cases the Member States shall ensure that the oral translation or oral summary is provided in the presence of a lawyer, if the suspected or accused person has a lawyer, that the oral translation or oral summary does not affect the fairness of the proceedings and that a (.) record of such oral translation or oral summary is made in any appropriate manner.</u></i></p>

MEMBER STATES' INITIATIVE	LIBE DRAFT AMENDMENTS	COMMISSION PROPOSAL (for reference)	DRAFT COUNCIL POSITION
Amendment 87			
<p>3(7). A person who has a right under this Article to translation of documents may, <i>at any time, waive this right.</i></p>	<p>3(7) A person <i>on whom</i> this Article <i>confers the right to receive translations of documents</i> may waive that right, <i>in writing, after receiving legal assistance on this point.</i></p>	<p>3(6) A person who has a right under this Article to translation of documents may <i>waive the right after receiving legal advice on the point.</i></p>	<p>As agreed on 25 March, it is suggested to accept this amendment, subject to the following redrafting (see also recital 16, which may appear redundant if this Article is adopted):</p> <p>3(7). <i>Any</i> waiver of the right to written translation of documents should be <i>subject to the requirements that the suspected or accused person has full knowledge of the consequences of his waiver and that the waiver was unequivocal and given voluntarily.</i></p>
<p>4. Member States shall cover the costs of interpretation and translation resulting from the application of Articles 2 and 3, irrespective of the outcome of the proceedings.</p>		<p>4. Member States shall cover the costs of interpretation and translation resulting from the application of Articles 2 and 3, irrespective of the outcome of proceedings.</p>	



MEMBER STATES' INITIATIVE	LIBE DRAFT AMENDMENTS	COMMISSION PROPOSAL (for reference)	DRAFT COUNCIL POSITION
Amendment 32 Article 5 - paragraph 1			
<p>5(1). <i>Member States shall take concrete measures to ensure that the interpretation and translation provided shall be of adequate quality so that the suspected or accused person, as well as a person subject to the execution of a European Arrest Warrant, is fully able to exercise his rights.</i></p>	<p>5(1) Member States shall take concrete measures to ensure that the interpretation and translation provided shall be of <b>high</b> quality so that the <b>suspect</b> as well as a person subject to a European Arrest Warrant <b>request</b> is able to exercise his rights.</p>	<p>5(1) Interpretation and translation <b>shall be provided in such a way as to ensure that the suspect or accused person</b> is fully able to exercise his rights.</p>	<p>It is suggested to offer Parliament the following alternative text:</p> <p>5(1) Member States shall take concrete measures to ensure that the interpretation and translation provided shall be of <b>such a</b> quality that the suspected or accused person, as well as a person subject to the execution of a European Arrest Warrant, is fully able to exercise his rights.</p>

MEMBER STATES' INITIATIVE	LIBE DRAFT AMENDMENTS	COMMISSION PROPOSAL (for reference)	DRAFT COUNCIL POSITION
<p>Amendment 33 Article 5 - paragraph 1 a (new)</p>			
	<p><i>5(1a) Member States shall ensure that training is offered for judges, prosecutors, lawyers, police and relevant court personnel in order for them to be able to assess the suspect's linguistic needs, to ensure his ability to understand the proceedings, and to assess the quality of interpretation and translation.</i></p>	<p>5(2) Member States shall offer training to judges, lawyers, prosecutors, police officers and other relevant court personnel in order to ensure the suspect's ability to understand the proceedings and to better comprehend the role of interpreters and translators.</p>	<p>- The Parliament could be asked to withdraw this amendment in the light of the new recital 12a, which seems to address the issue in a sufficient way.</p> <p>- <i>A titre subsidiaire</i>, it is suggested to offer Parliament the following alternative drafting:</p> <p><i>5(1a) Without prejudice to judicial independence or different judicial organisations in the European Union, Member States shall encourage those responsible for the training of judges, prosecutors and judicial staff involved in criminal proceedings to give special attention to the particularities of communicating with the assistance of an interpreter so as to ensure efficient and effective communication.</i></p>

MEMBER STATES' INITIATIVE	LIBE DRAFT AMENDMENTS	COMMISSION PROPOSAL (for reference)	DRAFT COUNCIL POSITION
	<p>Amendment 34 Article 5 - paragraph 1 b (new)</p> <p><i>5(1b) In order to guarantee a high standard of interpretation and translation and efficient access to it, Member States shall ensure that a system of training, qualification and accreditation of translators and interpreters for legal work is in place, and that a national register of independent professional translators and interpreters who are so qualified is established and available to lawyers and relevant authorities, including on a cross-border basis.</i></p>		<p>- The European Parliament could be asked to withdraw this amendment in the light of the new recital 16b, which seems to address the issue in a sufficient way.</p> <p>- <i>A titre subsidiaire</i>, it is suggested to offer Parliament the following alternative drafting:</p> <p><i>5(1b) In order to guarantee a high standard of interpretation and translation and efficient access to it, Member States shall ensure that a national register of independent professional translators and interpreters who are so qualified is established and available to lawyers and relevant authorities, including on a cross-border basis.</i></p>

MEMBER STATES' INITIATIVE	LIBE DRAFT AMENDMENTS	COMMISSION PROPOSAL (for reference)	DRAFT COUNCIL POSITION
Amendment 35 Article 5a (new)			
	<i>5a Any procedural deadlines shall take account of the time needed for translation and interpretation.</i>		It is suggested to address this amendment through a new recital along the following lines:  <i>"The rights to interpretation and to translation contained in this Directive should not compromise any other procedural right provided under national law."</i>

MEMBER STATES' INITIATIVE	LIBE DRAFT AMENDMENTS	COMMISSION PROPOSAL (for reference)	DRAFT COUNCIL POSITION
Amendment 36 Article 5b (new)			
	<p><i>Member States shall ensure that when interviews with the suspect have been conducted by police or prosecutors with the aid of an interpreter or when there is a waiver of rights pursuant to Article 3(7) an audio and a video recording are made which shall be provided to any party in the event of a dispute.</i></p>		<p>It is suggested to offer the European Parliament the following alternative text:</p> <p><i>5b. Member States shall ensure that when interviews with the suspect have been conducted by police or prosecutors with the aid of an interpreter, or when an oral translation or oral summary of written material is provided pursuant to Article 3(6) or when there is a waiver of rights pursuant to Article 3(7), it will be recorded in any appropriate manner; the recording procedure shall be in accordance with the national law of the Member State.</i></p>

MEMBER STATES' INITIATIVE	LIBE DRAFT AMENDMENTS	COMMISSION PROPOSAL (for reference)	DRAFT COUNCIL POSITION
Amendment 89 Article 6			
<p>6. Nothing in this Directive shall be construed as limiting or derogating from any of the rights and procedural safeguards that may be ensured under the European Convention for the Protection of Human Rights and Fundamental Freedoms, under other relevant provisions of international law or under the laws of any Member States which provide a higher level of protection.</p>	<p>6. Nothing in this Directive shall be construed as limiting or derogating from any of the rights and procedural safeguards that may be ensured under the European Convention for the Protection of Human Rights and Fundamental Freedoms, <i>under the EU Charter of Fundamental Rights</i>, under other relevant provisions of international law or under the laws of any Member States which provide a higher level of protection.</p>	<p>6. Nothing in this Directive shall be construed as limiting or derogating from any of the rights and procedural safeguards that may be ensured under the European Convention for the Protection of Human Rights and Fundamental Freedoms, under other relevant provisions of international law or under the laws of any Member States which provide a higher level of protection.</p>	<p>It is suggested to accept this amendment as it stands.</p>

MEMBER STATES' INITIATIVE	LIBE DRAFT AMENDMENTS	COMMISSION PROPOSAL (for reference)	DRAFT COUNCIL POSITION
Amendment 37 Article 7 (first part)			
Article 7. Member States shall <i>take the necessary measures</i> to comply with the provisions of this Directive by ..... <i>at the latest.</i> *	Member States shall take the necessary measures to comply with the provisions of this Directive by ..... at the latest.  * OJ: Please insert a date <i>two years</i> after the <i>entry into force</i> of this Directive.	7(1) Member States shall <i>bring into force the laws, regulations and administrative provisions</i> necessary to comply with this Directive by ... (* - <i>24 months after the day in which this Directive enters into force</i> )	It is suggested to accept this amendment in a slightly amended form, as Article 7(1):  7.1. Member States shall <i>bring into force the laws, regulations and administrative provisions necessary</i> to comply with this Directive by.....
* OJ: Please insert a date <i>two years</i> after the <i>entry into force</i> of this Directive.			

\* OJ: Please insert a date 30 months after the publication of this Directive in the Official Journal.

MEMBER STATES' INITIATIVE	LIBE DRAFT AMENDMENTS	COMMISSION PROPOSAL (for reference)	DRAFT COUNCIL POSITION
<p><i>By the same date Member States shall transmit to the Council and to the Commission the text of the provisions transposing into their national law the obligations imposed on them under this Directive.</i></p>	<p>Member States shall transmit to the Commission the text of the provisions transposing into their national law the obligations imposed on them under this Directive <i>together with a table showing how the provisions of this Directive correspond to the national provisions adopted.</i></p>	<p>7(3) Member States shall transmit to the Commission the text of the provisions transposing into their national law the obligations imposed on them under this Directive together with a table showing how the provisions of this Directive correspond to the national provisions adopted.</p>	<p>It is suggested to accept the first part of this amendment, as Article 7(2):</p> <p>7.2. Member States shall transmit to the Commission the text of the provisions transposing into their national law the obligations imposed on them under this Directive.</p> <p>The second part cannot be accepted (horizontal issue)</p>
	<p><i>7(2a) When Member States adopt those measures, they shall contain a reference to this Directive or shall be accompanied by such a reference on the occasion of their official publication. The methods of making such reference shall be laid down by the Member States.</i></p>	<p>7(2) When Member States adopt those measures, they shall contain a reference to this Directive or shall be accompanied by such a reference on the occasion of their official publication. The methods of making such reference shall be laid down by the Member States.</p>	<p>It is suggested to accept this amendment, which uses standard language:</p> <p><i>7.3. When Member States adopt those measures, they shall contain a reference to this Directive or shall be accompanied by such a reference on the occasion of their official publication. The methods of making such reference shall be laid down by the Member States.</i></p>

Amendment 91  
Article 7 (second part)

Amendment 92  
Article 7 - paragraph 2a



MEMBER STATES' INITIATIVE	LIBE DRAFT AMENDMENTS	COMMISSION PROPOSAL (for reference)	DRAFT COUNCIL POSITION
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Amendment 38 Article 8			
<p>Article 8. The Commission shall, by ..... , submit a report to the European Parliament and to the Council, assessing the extent to which the Member States have taken the necessary measures in order to comply with this Directive, accompanied, if necessary, by legislative proposals.</p>	<p>The Commission shall, by ..... , submit a report to the European Parliament and to the Council, assessing the extent to which the Member States have taken the necessary measures in order to comply with this Directive, accompanied, if necessary, by legislative proposals <i>to improve the safeguards for fair proceedings which it provides.</i></p>	<p>8. The Commission shall, by ..... <i>[36 months after publication of this Directive in the Official Journal]</i> submit a report to the European Parliament and to the Council, assessing the extent to which the Member States have taken the necessary measures in order to comply with this Directive, accompanied, if necessary, by legislative proposals.</p>	<p>This amendment seems to depart from standard wording used in other legislative instruments.  It is suggested that Parliament be invited to withdraw this amendment.</p>
	<p>* OJ: Please insert a date <i>three years</i> after the entry into force of this Directive.</p>		

\* OJ: Please insert a date 42 months after the publication of this Directive in the Official Journal.

MEMBER STATES' INITIATIVE	LIBE DRAFT AMENDMENTS	COMMISSION PROPOSAL (for reference)	DRAFT COUNCIL POSITION
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<p>Amendment 93 Article 8 - subparagraph 1a (new)</p>			
	<p><i>The report of the Commission shall also address the future cost implications of the measures taken by Member States pursuant to this Directive.</i></p>		<p>It is suggested that Parliament explains this amendment, which is difficult to understand.</p>

MEMBER STATES' INITIATIVE	LIBE DRAFT AMENDMENTS	COMMISSION PROPOSAL (for reference)	DRAFT COUNCIL POSITION
<p>Article 9. This Directive shall enter into force on the twentieth day following that of its publication in the <i>Official Journal of the European Union</i>.</p>		<p>9. This Directive shall enter into force on the twentieth day following that of its publication in the <i>Official Journal of the European Union</i>.</p>	

MEMBER STATES' INITIATIVE	LIBE DRAFT AMENDMENTS	COMMISSION PROPOSAL (for reference)	DRAFT COUNCIL POSITION
		<p>10(1) Member States shall adopt and publish, by [...] at the latest, the laws, regulations and administrative provisions necessary to comply with this Directive. They shall forthwith communicate to the Commission the text of those provisions and a correlation table between those provisions and this Directive.</p> <p>They shall apply those provisions from [...].</p> <p>When Member States adopt those provisions, they shall contain a reference to this Directive or be accompanied by such a reference on the occasion of their official publication. Member States shall determine how such reference is to be made.</p>	

MEMBER STATES' INITIATIVE	LIBE DRAFT AMENDMENTS	COMMISSION PROPOSAL (for reference)	DRAFT COUNCIL POSITION
		10(2) Member States shall communicate to the Commission the text of the main provisions of national law which they adopt in the field covered by this Directive.	
		11. This Directive shall enter into force on the [...] day following that of its publication in the <i>Official Journal of the European Union</i> .	
		12. This Directive is addressed to the Member States.	It is suggested to ask the Parliament to table an amendment on the line of this Commission text.

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