KOMISJA WSPÓLNOT EUROPEJSKICH

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Propozycja

DECYZJI RAMOWEJ RADY

w sprawie niektórych praw proceduralnych w postępowaniu karnym w Unii Europejskiej

.

(przedstawiona przez Komisję)

{SEC(2004) 491}

PL PL

EXPLANATORY MEMORANDUM

1. INTRODUCTION

1. This proposal for a Council Framework Decision aims to set common minimum standards as regards certain procedural rights applying in criminal proceedings throughout the European Union.

2. Article 6 of the Treaty on European Union (TEU) provides that the Union shall respect fundamental rights, as guaranteed by the European Convention for the Protection of Human Rights and Fundamental Freedoms (ECHR) and as they result from the constitutional traditions common to Member States. Moreover, in December 2000, the European Commission, the Council and the Parliament jointly signed and solemnly proclaimed the Charter of Fundamental Rights of the European Union.

3. The Presidency Conclusions of the Tampere European Council[1] stated that mutual recognition should become the cornerstone of judicial cooperation, but makes the point that mutual recognition "...and the necessary approximation of legislation would facilitate […] the judicial protection of individual rights"[2]. Furthermore the European Council asked the Council and the Commission to press ahead with mutual recognition measures "respecting the fundamental legal principles of the Member States"[3].

4. The Commission Communication to the Council and the European Parliament of 26 July 2000 on Mutual Recognition of Final Decisions in Criminal Matters[4] stated that "it must therefore be ensured that the treatment of suspects and the rights of the defence would not only not suffer from the implementation of the principle [of mutual recognition] but that the safeguards would even be improved through the process".

5. This was endorsed in the Programme of Measures to Implement the Principle of Mutual Recognition of Decisions in Criminal Matters[5] ("Programme of Measures"), adopted by the Council and the Commission. It pointed out that "mutual recognition is very much dependent on a number of parameters which determine its effectiveness".

6. These parameters include "mechanisms for safeguarding the rights of […] suspects" (parameter 3) and "the definition of common minimum standards necessary to facilitate the application of the principle of mutual recognition" (parameter 4). This proposal for a Framework Decision represents an embodiment of the stated aim of enhancing the protection of individual rights.

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[1] 15 and 16 October 1999.
[2] Conclusion 33.
[3] Conclusion 37.
[4] COM(2000) 495 final, 29.7.2000.
[5] OJ C 12, 15.1.2001, p. 10.

7. This proposal seeks to enhance the rights of all suspects and defendants generally. Offering an equivalent level of protection to suspects and defendants throughout the European Union by way of these common minimum standards should facilitate the application of the principle of mutual recognition in the manner set out in section 5, "The Principle of Mutual Recognition", below. It was within the contemplation of the Heads of State at Tampere that such "necessary approximation" should occur.

8. In seeking to enhance fair trial rights generally, this Framework Decision will also have the effect of ensuring a reasonable level of protection for foreign suspects and defendants[6] in particular, since several of the measures are specifically intended for them. The number of foreign defendants is increasing owing to various factors (increased job mobility, more people taking foreign holidays, migratory patterns, growth in the number of asylum seekers, refugees and displaced persons present in the Union etc) and will continue to do so. In recent years, there has been a growing awareness of serious cross-border criminality; criminal activity against the financial interests of the European Union increasingly has a transnational character. The TEC enables citizens of the Union to "move and reside freely within the territory of the Member States"[7]. Statistics suggest that approximately 6 million EU nationals live in a Member State other than their country of origin[8]. Logically, the number of those migrants becoming involved in criminal proceedings will grow with the increasing exercise of this right of free movement and residence. It is incumbent on the Member States to ensure that proper care is taken of EU citizens should they find themselves involved in criminal proceedings in a Member State other than their own.

2. THE EUROPEAN CONVENTION ON HUMAN RIGHTS (ECHR)

9. All the Member States have criminal justice systems that meet the requirements of Articles 5 (Right to liberty and security) and 6 (Right to a fair trial) of the ECHR, using a variety of procedural safeguards. The intention here is not to duplicate what is in the ECHR, but rather to promote compliance at a consistent standard. This can be done by orchestrating agreement between the Member States on a Union wide approach to a "fair trial".

10. The number of applications to the European Court of Human Rights (ECtHR) and the case-law of that court demonstrate that compliance with the ECHR is not universal. Furthermore, the number of applications is growing every year[9] and the ECtHR is “seriously overloaded”[10] – the volume of applications grew by over 500% in the period 1993-2000. Higher visibility of safeguards would improve knowledge

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6 "Foreign suspects and defendants" shall mean those who are not nationals of the country in which they are arrested. There is a further subdivision to be observed: some foreigners are EU nationals from another Member State, others are nationals of third countries. Unless otherwise stated, it does not matter which category they fall into for the purposes of this proposal.

7 Article 18 TEC.

8 Source: Eurostat Migration Statistics for 1998,1999 and 2000 give the figure of EU nationals living in a Member State other than their own as 5,900,000.

9 Report of the Evaluation Group to the Committee of Ministers on the European Court of Human Rights (EG(2001)1 of 27 September 2001.

10 Preface to the Report the Evaluation Group to the Committee of Ministers on the European Court of Human Rights referred to in footnote 9 above.

of rights on the part of all actors in the criminal justice systems and hence facilitate compliance.

11. This proposal for a Framework Decision highlights some rights identified as basic, many of which already exist in some form in the criminal justice systems of the Member States. These include the right to legal advice and the right to understand the "nature and cause of the accusation", from which is derived the right to translation of documents and access to an interpreter where the defendant does not understand the language of the proceedings. Whilst it is proper and appropriate for each Member State to decide on its criminal justice system, the discrepancies in procedure as concerns these basic safeguards should be kept to a minimum.

3. THE CHARTER OF FUNDAMENTAL RIGHTS OF THE EUROPEAN UNION (CFREU)

12. In December 2000, the European Commission, the Council and the Parliament jointly signed and solemnly proclaimed the Charter of Fundamental Rights of the European Union (CFREU)[11]. The CFREU covers the civil, political, economic and social rights of European citizens and synthesises the constitutional traditions and international obligations common to the Member States. A significant aspect of the Charter is that it affirms that the European Union is a political community, rather than solely an economic organisation. Moreover, it asserts that respect for fundamental rights will be at the foundation of all European law.

13. The section entitled “Justice” (Articles 47-50) lays down the right to a fair trial (Art. 47) and provides that respect for the rights of the defence of anyone who has been charged [with a criminal offence] shall be guaranteed (Art. 48). It provides for the presumption of innocence, legality and proportionality of criminal offences and penalties. It extends the principle of ne bis in idem to the whole of the EU.

14. This proposal espouses the spirit of the CFREU. It contributes to the definition of a "fair trial" and to agreeing common standards for "the rights of the defence" so that equivalent treatment in respect of trials throughout the EU can be facilitated.

4. BACKGROUND TO THE FRAMEWORK DECISION

15. In line with the Tampere Conclusions, the Commission has taken the necessary steps to carry out the Programme of Measures for Mutual Recognition, including considering the relevant parameters. The introduction to the Programme of Measures makes the point that "the extent of the mutual recognition exercise is very much dependent on a number of parameters which determine its effectiveness". In order to take parameters 3 and 4, referred to in paragraph 6 above, into account, it was necessary to consider whether it was appropriate to take action on procedural safeguards at the EU level. The Commission carried out a comprehensive consultation and extended impact assessment exercise.

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[11] The text of the CFREU can be found at: http://www.europarl.eu.int/charter/default_en.htm.

16. In February 2003, the Commission presented a Green Paper on Procedural Safeguards for Suspects and Defendants in Criminal Proceedings[12]. The Green Paper noted that the Member States of the EU are all signatories of the principal treaty setting the basic standards, the ECHR, as are all the acceding states and candidate countries, so the mechanism for achieving mutual trust is already in place. Nevertheless, the Green Paper explained that existing divergent practices had hitherto hindered mutual trust and confidence, and that in order to counter that risk, the EU is justified in taking action on procedural rights pursuant to Article 31 TEU.

17. The Commission received 78 written replies to the Green Paper[13], together with a number of emails, telephone calls and other communications in response. The overwhelming majority of respondents endorsed the Commission's proposal to set common minimum standards for procedural safeguards. Many respondents applauded this effort but considered that these proposals do not go far enough[14]. Of the Member States, Ireland, Luxembourg, Austria, the United Kingdom, the Netherlands, Finland, Denmark, Germany, Sweden and France replied either through their Ministry of Justice or another governmental body. The views as expressed by these bodies ranged from support[15] to opposition[16]. The new Member States were also involved in the consultation, with Slovakia and the Czech Republic responding to the Green Paper and representatives from all the new States taking part in bilateral and other meetings.

18. In June 2003, the Commission held a public hearing on the subject of safeguards. All those who had replied to the Green Paper, or manifested an interest, were invited to attend and given the opportunity to express their views orally. In addition, all the Member States were invited to send a representative. What emerged at the hearing was a great deal of support from legal practitioners and non-governmental organisations for the Commission's proposals. The representatives of the Member

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12 COM(2003) 75 final, 19.2.2003.

13 The written responses may be consulted on DG JHA's website at: http://europa.eu.int/comm/justice_home/fsj/criminal/procedural/fsj_criminal_responses_en.htm.

14 For examples of positive reactions, see that of Amnesty International: "AI welcomes any measures taken which aim to ensure the implementation of existing obligations of Member States under international human rights treaties and ensure the highest possible standards for the protection of human rights, including the rights to fair trial, and do not risk weakening existing standards or practice to the lowest common denominator". The Law Society of England and Wales: "The Law Society welcomes the publication of the Green Paper, which we consider an important step in developing mutual trust between member states in the protections of individuals". The French Cour de Cassation: "This type of initiative seems particularly appropriate insofar as it is part of the creation of a real European area of justice. It is even more interesting because it is capable of giving people greater confidence in the different European legal systems, by harmonising procedural safeguards". The criticism from Liberty (whose response was generally positive) is typical of many comments received in this vein: "It is a weakness of this Green Paper that it does not address certain critical rights, namely the right to bail; the right to have evidence handled fairly; symmetry in sentencing; double jeopardy; and trials *in absentia"*.

15 For an example of support, the following is from the Finnish Ministry of Justice: "As regards the areas proposed in the Green Paper, Finland supports minimum Union-level standards on the right to legal assistance, the right to interpretation and translation assistance, and the Letter of Rights. It is particularly important to ensure that these rights are catered for at a sufficiently early stage, i.e. right from the moment the suspect is apprehended or at the latest by the time he/she starts to be questioned".

16 For a negative assessment, see the submissions of Response of the Minister for Justice, Equality and Law Reform, Ireland: "[t]he Green Paper […]seeks to introduce obligations which would apply internally in each Member State. This is outside the scope of article 31 and breaches the principle of subsidiarity".

States present were divided in their support. Slovakia and the Czech Republic sent representatives as observers. The Member States that are opposed to the idea invoke (1) the subsidiarity principle, (2) concerns over legal basis and (3) the fear that "common minimum standards" could result in a general lowering of standards as the grounds for their opposition, (4) the argument that common minimum standards have already been set by the ECHR and that no further action is needed and finally, (5) fears were expressed that implementing these proposals would be technically difficult.

19. The Commission considers first that in this area only action at the EU level can be effective in ensuring *common* standards. To date, the Member States have complied on a national basis with their fair trial obligations, deriving principally from the ECHR, and this has led to discrepancies in the levels of safeguards in operation in the different Member States. It has also led to speculation about standards in other Member States and on occasion, there have been accusations of deficiencies in the criminal justice system of one Member State in the press and media of another. This would be remedied by the adoption of common minimum standards. By definition, the standards can only be *common* if they are set by the Member States acting in concert, so it is not possible to achieve common standards <u>and</u> rely entirely on action at the national level.

20. As regards the legal basis, the Commission relies on Article 31 (1) of the Treaty on European Union. Article 31(1) envisages that the EU may develop "common action" so as to ensure compatibility in rules where necessary to improve cooperation. Judicial cooperation, in particular mutual recognition presents a situation where compatibility is necessary to improve co-operation. It is for that reason that the parameters of the Mutual Recognition Programme include “mechanisms for safeguarding the rights of […] suspects” (parameter 3) and “common minimum standards necessary to facilitate the application of the principle of mutual recognition” (parameter 4).

21. There is no need to fear that common standards will lead to a lowering of standards. Member States remain free to implement the highest level of safeguards they consider appropriate as long as they comply with the agreed minimum. Furthermore, the non-regression provision in Article 17 states explicitly that nothing in the Framework Decision may be interpreted as "limiting or derogating from" any existing rights. The proposal is for *common minimum standards*. It is unthinkable that Member States, bound by Article 6(2) TEU to respect fundamental rights, would use that as a basis to "level down" where current provisions exceed the EU requirements.

22. On the fourth point, the Commission's research and consultation, together with the case-law of the ECtHR, shows the ECHR is implemented to very differing standards in the Member States and that there are many violations of the ECHR. Those divergences prejudice a common protection of procedural rights within the Union, jeopardize mutual trust and affect the smooth operation of the mutual recognition principle. Furthermore, the Commission's aim is to render more efficient and visible the practical operation of ECHR rights with this proposal so that everyone in the criminal justice system is more aware of them, not only defendants but also police officers, lawyers, translators and interpreters and all other actors in the criminal justice system. This should lead to better compliance with the ECHR.

23. Finally as regards technical difficulties and cost, the Commission contends that the final outcome for this proposal should not lead to an intolerable burden for Member States since the substance of the provisions essentially confirms existing rights under the ECHR and relevant case-law.

24. The Commission has concluded that the smooth operation of the measures set out in the Programme of Measures can best be achieved if accompanied by agreed common minimum standards in relevant areas. The areas where common minimum standards are proposed at this first stage are:

– access to legal advice, both before the trial and at trial,

– access to free interpretation and translation,

– ensuring that persons who are not capable of understanding or following the proceedings receive appropriate attention,

– the right to communicate, *inter alia*, with consular authorities in the case of foreign suspects, and

– notifying suspected persons of their rights (by giving them a written "Letter of Rights").

The decision to make proposals in relation to these five rights at this first stage was taken because these rights are of particular importance in the context of mutual recognition, since they have a transnational element which is not a feature of other fair trial rights, apart from the right to bail which is being covered separately in a forthcoming Green Paper. The foreign defendant will generally need an interpreter and may require consular assistance. He is also less likely to be familiar with his rights in the country of arrest and hence all the more likely to be helped by a Letter of Rights in his own language. All suspected persons are in a better position if they have a lawyer, and it is true that a person who has a lawyer is more likely to have his other rights respected as he will have someone who is aware of the rights and can verify that they are complied with. For this reasons, it was important to include the right to legal advice. Persons who are not capable of understanding or following the proceedings and who need appropriate attention are a special category of defendant requiring a higher degree of protection. This is an embodiment of the concept of "equality of arms" which requires a fair balance between the parties in court proceedings.

25. The Commission reiterates that this draft Framework Decision is a first step and that other measures are envisaged over the next few years. There is no intention to convey the impression that these five rights are more important than others, simply that they are more immediately relevant to mutual recognition and the problems that have arisen to date in the discussion of mutual recognition measures. The Commission has already started to examine the need for safeguards relating to fairness in obtaining, handling and use of evidence throughout the EU. The rights stemming from the presumption of innocence (including the right to silence, the right against self-incrimination and the rules governing the burden of proof) will also be examined. The Commission's first assessment of this work, which has already started, will be made public in 2004.

5. THE PRINCIPLE OF MUTUAL RECOGNITION

26. At the European Council in October 1999 in Tampere, it was agreed that the principle of mutual recognition should become the cornerstone of judicial co-operation in both civil and criminal matters. Mutual recognition implies that while another state may not deal with a certain matter in the same or even a similar way as one's own state, the results are accepted as equivalent to decisions of one's own state[17].

27. The European Council also asked the Council and the Commission to adopt, by December 2000, the Programme of Measures to implement the principle of mutual recognition in criminal matters[18].

28. The Programme of Measures consists of twenty-four areas which are deemed suitable for mutual recognition, some of which will be amalgamated so that between fifteen and twenty proposals will ultimately be put forward under the Programme. The first instrument to have been adopted on mutual recognition in criminal matters is the Council Framework Decision of 13 June 2002 on the European arrest warrant and the surrender procedures between Member States[19]. This has been followed by a Framework Decision on orders for freezing property or evidence[20], and will be followed by measures on confiscation orders, financial penalties and transmission of evidence and criminal records. If these measures, and indeed the rest of the proposals resulting from the Programme of Measures, are to be implemented successfully, mutual recognition must be welcomed in the Member States, not only at government and policy level but also by those who will be responsible for the day-to-day operation of the measures. Mutual recognition can only operate effectively in a spirit of confidence, whereby not only the judicial authorities, but all actors in the criminal process see decisions of the judicial authorities of other Member States as equivalent to their own and do not call in question their judicial capacity and respect for fair trial rights. This is important so as to enhance a general perception of mutual recognition which is positive, and that involves "not only trust in the adequacy of one's partner's rules, but also trust that these rules are correctly applied"[21].

29. All Member States are parties to the ECHR and this is sometimes cited as adequate grounds for mutual confidence. However experience has shown that, despite the need for such confidence, there is not always sufficient trust in the criminal justice systems of other Member States and this notwithstanding the fact that they are all signatories to the ECHR[22]. This proposal for a Framework Decision is an implicit acknowledgement of that insufficient trust in that it provides a mechanism for

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17 COM(2000) 495 final, 26.7.2000, p. 4.

18 OJ C 12, 15.1.2001, p. 10.

19 OJ L 190, 18.7.2002, p. 1.

20 Council Framework Decision 2003/577/JHA of 22 July 2003 on the execution in the European Union of orders freezing property or evidence. OJ L 196, of 2.8.2003, p. 45.

21 COM(2000) 495 final, 26.7.2000, p. 4.

22 For example in the UK case *R v. Secretary of State ex parte Ramda*, 27 June 2002, the High Court said that France's status as a signatory to the ECHR could not be invoked as a complete answer to complaints about the fairness of his trial. Likewise, in its judgment of 16 May 2003, in the case of *Irastorza Dorronsoro*, the Cour d'Appel de Pau (France) - refused to accede to an extradition request from Spain on the ground that there was a suspicion that a co-defendant had been "tortured" by Spanish police officers.

enhancing and increasing mutual confidence. This will be even more important when there must be trust between twenty-five states or more.

30. The rights proposed will operate so as to strengthen mutual trust and thereby enhance the operation of mutual recognition in all its forms as regards criminal matters. Continuous evaluation and monitoring, if it discloses that standards are adhered to and shows any improvement in areas currently causing concern, will serve to reinforce that trust.

6. SPECIFIC PROVISIONS

6.1. The right to legal advice

31. During the consultation period, the Commission researched the Member States' differing arrangements. The rules governing both access to legal representation and its organisation vary from one Member State to another.

32. This Framework Decision proposes EU wide agreement that suspected persons be given access to legal advice from a qualified lawyer as soon as possible. At present, some Member States impose a limit on access, have an initial period during which the suspect may not have access to a lawyer ("garde à vue") or preclude the presence of a lawyer during police questioning. Some Member States do not have a formal scheme offering 24-hour access to a lawyer, so that those arrested at night or at week-ends are also denied access, at least on a temporary basis. This Framework Decision proposes that legal advice be an entitlement throughout all the criminal proceedings which are defined as all proceedings taking place within the European Union aiming to establish the guilt or innocence of a person suspected of having committed a criminal offence or to decide on the outcome following a guilty plea in respect of a criminal charge.

33. Where the suspected person falls into one of the listed categories of persons who are not able to understand or follow the proceedings or is a minor or is the subject of a European Arrest Warrant or extradition request or other surrender procedure legal advice should be made available. This does not affect a person's right to defend themselves if they choose. Member States should bear the costs of legal advice where those costs represent undue hardship for the suspected person or his dependants.

34. This Framework Decision proposes that Member States be required to implement a system for providing a replacement if the original lawyer is found not to be effective.

6.2. The right to free interpretation and translations

35. Article 6 (3) of the ECHR lays down the right for a defendant to have the free assistance of an interpreter if he cannot understand or speak the language used in court. The case-law of the ECtHR[23] also makes it clear that the obligation towards the defendant extends to translations of all the relevant documents in the proceedings.

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23 *Kamasinski v. Austria* (judgment of 19 December 1989 A Series N° 168) para74.

36. The Commission's research showed that whilst Member States were conscious of this obligation in theory, it was not complied with in full in reality. During police questioning, a qualified interpreter was not always present, with the services of lay persons who have some knowledge of the defendant's language sometimes being used. There were limitations on the documents translated for defendants. Whereas Article 6(3)(e) makes it clear that the obligation is to provide "the free assistance of an interpreter" for a defendant who cannot understand or speak the language used in court, interpreters sometimes appeared to be provided for the benefit of the judge and/or prosecutor, rather than for the defendant. In some instances, the judge's or prosecutor's statements were not interpreted for defendants and the role of the interpreter was limited to interpreting the judge's direct questions to the defendant and his replies back to the judge, rather than ensuring that the defendant could understand the proceedings.

37. The Commission also noted that Member States had difficulty in recruiting sufficient legal/court translators and interpreters. In some Member States, the profession of public service interpreter/translator has official status, with training organised at national level, registration, accreditation and continuous professional development. This is not the case in all Member States. The profession suffers from a lack of status, with translators and interpreters sometimes being poorly paid, not having social benefits (such as paid sick leave and pension rights) and complaining that they are not consulted enough by their counterparts in the legal profession.

38. This is something that the Commission will continue to explore in the hope of finding a solution. It is essential that there are enough translators and interpreters in each Member State to cover the needs of foreign defendants[24].

6.3. Persons who cannot understand or follow the proceedings

39. Certain suspects are in a weaker position than the average person owing to their age or their physical, mental or emotional condition when it comes to understanding or following the proceedings. These persons need specific attention to ensure that their particular rights are respected and to guard against a possible miscarriage of justice.

40. Law enforcement and judicial officers should have an increased awareness of the problems of persons who cannot understand or follow the proceedings. They should be required to consider whether the suspected person is in need of specific attention, and if so, they should take the necessary steps to offer that person the appropriate attention.

41. The nature of the specific attention to be offered will vary according to the situation. For example, children should be accompanied by a parent or appropriate adult during questioning; persons needing medical attention should be provided with a doctor etc. Whilst every situation cannot be set out and provided for in an instrument of this type, the responsibility must be on Member States to ensure that their criminal justice system provides for a specific attention for those suspects and defendants who need it.

[24] See footnote 6 regarding foreign defendants.

6.4. The right to communication

42. A detained person should be entitled to have family members, persons assimilated to family members and any employer informed of the detention. This can be achieved by having the relevant information communicated on behalf of the detained person if there are concerns about preserving any evidence.

43. Where the detained person is a non-national, it may be appropriate for the consular authorities of the person's home state to be informed. Foreign suspects and defendants are an easily identifiable vulnerable group who sometimes need additional protection such as is offered by the 1963 Vienna Convention on Consular Relations (VCCR), which provides that on arrest or on detention a foreign national has the right to ask for his consulate to be informed of the detention and to receive visits from consular officials.

44. Foreign nationals may refuse to see a consular official who is the representative of their government, for example, if they are asylum seekers or refugees fleeing persecution in their State of origin. Those falling into this category may contact representatives from a recognised international humanitarian organisation.

6.5. Written notification of rights (the "Letter of Rights")

45. It is not always the case that suspects, and even sometimes the law enforcement officers questioning them, have full knowledge of the relevant rights. If suspects were properly aware of their rights on arrest there would be fewer allegations of miscarriage of justice and violations of the ECHR. A simple and inexpensive way to ensure an adequate level of knowledge is to require Member States to produce a short, standard written statement of basic rights (the "Letter of Rights") and to make it compulsory for all suspects to be given this written notification in a language they understand at the earliest possible opportunity and certainly before any questioning takes place.

6.6. Evaluation and monitoring

46. Since the principle of mutual recognition may only be implemented efficiently if there is mutual trust, and since common minimum standards will enhance trust, it is important for any agreed common standards to be respected. The level of compliance should be demonstrably high. In order for each Member State to be confident of the level of compliance in the other Member States, there must be some form of evaluation.

47. Mutual trust must go beyond the perceptions of the governments of the Member States - it must also be established in the minds of practitioners, law enforcement and judicial officers and all those who will administer decisions based on mutual recognition on a daily basis. This cannot be achieved overnight, and cannot be achieved at all unless there is some reliable means of assessing compliance with common minimum standards across the European Union. Evaluation and monitoring should be carried out on a regular, continuous basis and the results should be made available. This will provide a system for ensuring that standards are adhered to and will bring both any improvement and/or deterioration to the notice of the other Member States as well as the European institutions.

48. It is appropriate that the Commission, as a body charged with making proposals[25] and in the usual course of events with monitoring that Framework Decisions are correctly implemented in the Member States[26], should co-ordinate evaluation and monitoring. The necessary information and data should be provided by the Member States for the Commission to collate. The Commission will, if necessary, delegate the analysis of the information to an outside body such as an independent group of experts.

7. LEGAL BASIS

49. This proposal has a legal basis under Article 31 of the Treaty on European Union (TEU), as amended by the Treaty of Nice, which covers common action on judicial co-operation in criminal matters.

50. Article 31 (1) (c) of the TEU provides for "ensuring compatibility in rules applicable in the Member States as may be necessary to improve [judicial co-operation in criminal matters]". Ensuring compatibility can be achieved, inter alia, by providing for some approximation of minimum procedural rules in the Member States so as to enhance mutual trust and confidence.

51. The Commission considers that this proposal constitutes the necessary complement to the mutual recognition measures that are designed to increase efficiency of prosecution. A set of agreed procedural rights to ensure equivalent treatment of suspected persons throughout the EU should enable judicial cooperation measures to be applied as efficiently as possible, especially those that envisage surrender of persons or of evidence to another Member State. Any reluctance on the part of the authorities of one State to surrender a national to the judicial authorities of another may be alleviated in this way.

8. EXPLANATION OF THE ARTICLES

52. Gender neutrality: The terms "he" and "his" are used throughout to refer to the suspected person or the suspected person's lawyer. They are intended to be gender neutral and to cover both male and female suspects and male and female lawyers.

Article 1 - Scope of application of procedural rights

53. This Article sets out the scope of application of the Framework Decision. The scope includes all persons suspected in respect of a criminal offence in any proceedings to establish the guilt or innocence of a person suspected of having committed a criminal offence, or to decide on the outcome following a guilty in plea in respect of a criminal charge or to rule on any appeal from these proceedings. There is no differentiation between EU national and third country nationals since to offer one group better protection could lead to criticisms of discrimination that would defeat

[25] Article 34(2) TEU.

[26] The usual practice following adoption of a Framework Decision is for Member States to send the Commission details of their implementing legislation and for the Commission to compile a report on implementation for transmission to the Council.

the aim of enhancing trust between the Member States in each other's criminal justice system.

54. Since the case-law of the ECtHR has clarified that persons being questioned in relation to offences, but not yet formally charged, should be covered by Article 6 ECHR, persons arrested or detained in connection with a criminal charge also come within the ambit of this provision. These rights start to apply from the time when the person is informed that he is suspected of having committed an offence (e.g. on arrest or when the suspected person is no longer free to leave police custody).

Article 2 – The right to legal advice

55. This Article sets out the basic right to legal advice for a suspected person if he wishes to receive it. The Article provides that legal advice should be provided as soon as possible. It is important that a suspect benefits from legal advice before answering any questions in the course of which he may say something he later regrets without understanding the legal implications.

Article 3 – Obligation to provide legal assistance

56. Article 6 (3) (c) ECHR makes it clear that a suspected person has the right to defend himself in person which implies that he is entitled to refuse to be represented by a lawyer. Notwithstanding that right, in certain circumstances it is particularly desirable that the suspected person receives legal advice. Those circumstances are set out in Article 3 and include cases where the suspected person is remanded in custody prior to the trial, or is formally accused of having committed a criminal offence which involves a complex factual or legal situation or which is subject to severe punishment, in particular where, in a Member State, a mandatory sentence of more than one year's imprisonment can be imposed, or is the subject of a European Arrest Warrant or extradition request or other surrender procedure, or is a minor, or appears not to be able to understand or follow the content or the meaning of the proceedings owing to his age, mental, physical or emotional condition. This provision requires Member States to ensure that every effort is made so that those persons in particular receive legal advice.

Article 4 - Obligation to ensure effectiveness of legal advice

57. This Article provides that Member States should ensure that some check is made that effective advice is given.

58. The Commission has chosen to specify that only lawyers as defined in Article 1(2)(a) of Directive 98/5 EC[27] are employed in this context so as to help to safeguard effectiveness.. If the legal advice offered is not effective, Member States are obliged to provide an alternative[28]. This right, stemming from Article 6(3)(c) of the ECHR, has been explained in the case-law of the ECtHR (e.g. in *Artico v. Italy*).

27 Directive 98/5/EC of the European Parliament and of the Council of 16 February 1998.
28 *Artico v. Italy* May 13, 1980, Series A, n° 37.

59. Since the suspect is not always in a position to assess the effectiveness of his legal representation, the onus must be on the Member States to establish a system for checking this.

Article 5 – The right to free legal advice

60. This Article provides that where Article 3 applies legal advice should be provided at no cost to the suspected person if these costs would cause undue financial hardship to himself or his dependants. Member States must ensure that they have in place a mechanism for ascertaining whether the suspected person has the means to pay for legal advice. Under the ECHR, the defendant does not have to prove "beyond all doubt" that he lacks the means to pay for his defence (*Pakelli v. Germany*[29]). Member States should respect this ECtHR guidance in connection with the assessment of the person's means.

61. This Article provides that legal advice should be free if the person's means fall below a set minimum. Some Member States operate a means test to establish whether the defendant "has not sufficient means to pay for his defence". Others provide free legal advice to all on the basis that a means test is expensive to operate and that some of the costs can be recovered from the defendant in certain circumstances. Member States are free to operate the system that appears to them to be the most cost effective as long as free legal advice remains available when it is in the interests of justice.

Article 6 – The right to free interpretation

62. The assistance of an interpreter or a translator must be free of charge to the suspect. This right is established in the case-law of the ECtHR. In the case of *Luedicke, Belkacem and Koç v. Germany*, the ECtHR held that it follows from Article 6(3)(b) that for anyone who cannot speak or understand the language used in court, the right to receive the free assistance of an interpreter, without subsequently having claimed back from him payment of the costs thereby incurred[30] must be respected. In *Kamasinski v. Austria*[31], the ECtHR held that the principle also extended to translation of "documentary material".

63. Member States are under an obligation to provide an interpreter as soon as possible after it has come to light that the suspect does not understand the language of the proceedings. This right extends to all sessions of police questioning, meetings between the suspect and his lawyer and, after charge, occasions when the person's presence is required at court. It is clear from the ECtHR case-law that the obligation to provide an interpreter, which is laid down in the ECHR, is not always respected[32]. Article 6 of the Framework Decision sets out the right, pointing out that it applies "throughout the proceedings".

64. This Article covers persons with hearing or speech impairments. Article 6(3) of the ECHR provides that everyone charged with a criminal offence has the right to be

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[29] *Pakelli v. Germany,* judgment of 25 April 1983, Series A n° 64 para. 34.

[30] *Luedicke, Belkacem and Koç v. Germany* – judgment of 28 November 1978, Series A N°29 para.46.

[31] *Kamasinski v. Austria* (cited above).

[32] *Cuscani v. UK* - judgment of 24 September 2002 - is a good example where the Court proposed to rely on the defendant's brother to interpret, which was held to be a violation of Art. 6.

informed about what he is accused of so that he understands the nature and cause of the accusation. He also has the right to have the assistance of an interpreter if he cannot understand the language used in court. This applies also to deaf suspects or people with hearing or speech impairments. Inadequate communication can affect a deaf suspect's chances of receiving fair treatment as regards questioning by law enforcement officers. It also affects his chances of a fair trial. Member States must therefore ensure that police stations and courts provide proper specialised sign language interpreting for deaf suspects. As the consequences of poor or incompetent interpreting can be so serious, it is important that only qualified and experienced sign language interpreters are assigned for court proceedings or police interviews.

65. Some people who are deaf require the services of a lipspeaker. Lipspeakers communicate with deaf people who do not know or use sign language, but who are usually skilled lipreaders. This is also covered in the Article as an alternative.

Article 7 – The right to free translation of relevant documents

66. There is a right to translations of relevant material but this right is not unlimited. The ECtHR has ruled that Art. 6(3)(e) ECHR does not require a written translation of all items of written evidence or official documents in the procedure but it has ruled that documents which the defendant "needs to understand in order to have a fair trial" must be translated[33]. The rules on how much material is translated vary from one Member State to the next and also in accordance with the nature of the case. This variation is acceptable as long as the proceedings remain "fair". The onus should be on the defence lawyer to ask for translations of any documents he considers necessary over and above what is provided by the prosecution. Since the conduct of the defence is essentially a matter between the defendant and his lawyer, the defence lawyer is best placed to assess which documents are needed. Consequently, this Article places the onus is on the competent authorities to decide what documents shall be provided in translation but the suspect's lawyer has the right to request further documents in translation.

Article 8 – Accuracy of the translation and interpretation

67. The standard of interpretation and translation must be good enough to enable the suspect to understand the nature and cause of the accusation.

68. Member States must ensure that there is in place within their jurisdiction a system so that lawyers, judges, defendants or anyone else involved in criminal proceedings who becomes aware that the required standard of interpretation has not been met by a particular interpreter or in a particular case may report it so that a replacement translator or interpreter may be provided.

Article 9 – Recording the proceedings

69. The standard required by the ECHR is that the interpretation be such as to enable the defendant's "effective participation" in the proceedings. If he then makes an application to the ECtHR on the grounds that the interpretation was inadequate and

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33 *Kamasinski v. Austria,* cited above, para 74.

damaging to his effective participation in the proceedings, it is important to have a method of verification of the interpretation. It is therefore incumbent on Member States to ensure that a recording exists in the event of a dispute.

70. The purpose of this provision is to have a method of verifying that the interpretation was accurate and not to challenge the proceedings from any other point of view since this would otherwise lead to preferential treatment of suspected persons who need interpretation. Therefore, the recordings may only be used for that one purpose.

Article 10 – The right to specific attention

71. This Article provides that Member States shall ensure that a person who cannot understand or follow the proceedings, owing to their age or mental, physical or emotional condition, is offered any specific relevant attention, such as medical attention or the presence of a parent in the case of children. The duty to provide specific attention applies throughout criminal proceedings. This enhanced duty of care is to promote fair trials and to avoid potential miscarriages of justice based on vulnerability. Consultation and replies to the Green Paper have made it clear that identifying these suspects is difficult. The minimum expectation is that law enforcement officers ask themselves the question whether the suspect is able to understand or follow the proceedings, by virtue of his age or mental, physical or emotional condition. Any steps taken as a consequence of this right should be recorded in writing in the suspects' notes.

Article 11 – The rights of suspected persons entitled to specific attention

72. This Article specifies which steps must be taken in accordance with Article 10. In order to verify that the correct procedures have been followed in the case of questioning by law enforcement officers of persons who cannot understand or follow the proceedings, Member States must ensure that an audio or video recording is made of any pre-trial questioning. Any party requesting a copy of the recording in the event of a dispute must be provided with one.

73. Medical assistance should be provided if the suspected person needs it.

74. A suspected person entitled to specific attention should, where appropriate, be allowed to have a suitable third person present during police questioning in order to provide an additional safeguard of the fairness of the proceedings.

Article 12 – The right to communicate

75. This Article lays down the right for a person remanded in custody to have his family, persons assimilated to his family or his employer contacted as soon as possible.

76. It is proposed here that if direct communication is inappropriate, communication may be by other channels including the consular authorities or an international humanitarian organisation.

Article 13 – The right to communicate with consular authorities

77. This Article restates the right to communicate with consular authorities. It places a duty on Member States to ensure that all foreign detainees are able to have the consular authorities of their home State informed of the detention if they so wish.

78. If a detained suspect does not wish to have the assistance of the consular authorities of his home State, he should be entitled to have the assistance of an international humanitarian organisation. Unless individual Member States decide otherwise, the most suitable international humanitarian organisation offering this type of assistance is the International Committee of the Red Cross (ICRC) whose official functions include visits to detainees[34]. Member States are invited to decide which international humanitarian organisations they recognise so that the concept of "recognised international humanitarian organisation" can be used to correct effect and to prevent recourse to organisations that do not have the approval of the Member State in question.

79. Member States have a duty towards their long-term non-national residents, particularly if these are refugees. A refugee from the regime in force in his home State will not want the assistance of the consular authorities of that State. Refugees must be able to contact representatives from another State that has agreed to look after their interests[35] or an international humanitarian organisation for this type of assistance[36]. This Article proposes that the right to consular assistance be extended to long-term non-national residents of a Sending state, particularly if they have refugee status. Member States should ensure that this type of assistance is an option available to the suspect.

Article 14 - Duty to inform a suspected person of his rights in writing – Letter of Rights

80. Article 14 sets out the duty for Member States to ensure that all detained or arrested suspects are made aware of their basic rights by giving them written notification of those rights. The Letter of Rights should be kept available in the official Community languages, either in paper form or on computer so that it can be printed when needed. Member States may assess the need to have available translations into languages commonly encountered in the locality, and the relevant authorities are best placed to

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34 Extract from ICRC annual report 2002: "[In 2002] ICRC delegates visited 448,063 detainees held in 2,007 places of detention in more than 75 countries. Of this number, 26,727 detainees were registered and visited in 2002 for the first time. A total of 47,205 detention certificates were issued. Detainees who were not individually monitored but nevertheless benefited from ICRC assistance are included in the total number visited."

35 Rule 38 of the Standard Minimum Rules for the Treatment of Prisoners adopted in 1955 by the UN Congress on the Prevention of crime and the Treatment of Offenders: (1) […]. (2) Prisoners who are nationals of States without diplomatic or consular representation in the country and refugees or stateless persons shall be allowed similar facilities to communicate with the diplomatic representative of the State which takes charge of their interests or any national or international authority whose task it is to protect such persons.

36 Principle 16 of the Body of Principles for the Protection of all Persons under any Form of Detention or Imprisonment adopted by the UN General assembly in 1988: 1.[…] 2. If a detained or imprisoned person is a foreigner, he shall also be promptly informed of his right to communicate by appropriate means with […] the representative of the competent international organisation, if he is a refugee or is otherwise under the protection of an intergovernmental organisation.

know which those languages are for each locality. The Commission proposes that suspects be given a "Letter of Rights" as soon as possible after arrest. The law enforcement officer and the suspect should ideally both sign the Letter of Rights, as evidence that it has been offered, given and accepted. However the Commission is aware of possible reluctance on the part of suspects to sign anything in the police station. The Letter of Rights should be produced in duplicate, with one (signed) copy being retained by the law enforcement officer and one (signed) copy being retained by the suspect. A note should be made in the record stating that the Letter of Rights was offered, and whether or not the suspect agreed to sign it.

81. Annex A contains a suggested form of common wording for the Letter of Rights. It states the language version so that the suspect can be given the Letter of Rights in a language he understands. It then sets out the basic rights to legal advice, to interpretation, specific attention and consular assistance, if appropriate, as headings to be completed by the Member States.

Article 15- Evaluating and monitoring the effectiveness of the Framework Decision

82. It is essential that this Framework Decision is fully evaluated and monitored. Apart from reporting on the proper implementation of its provisions into national legislation, the Commission proposes that regular monitoring be carried out. This is particularly important in the case of legislation that confers rights as those rights are meaningless unless they are complied with. Only regular monitoring will show that there has been full compliance. Additionally, if the Framework Decision is to achieve its stated objective of enhancing mutual trust, there must be public, verifiable statistics and reports showing that rights are complied with so that observers in other Member States (not only in government, but also lawyers, academics and NGOs) may be confident that fair trial rights are observed in each national system. The evaluation and monitoring should be carried out under the supervision of the Commission. An independent team may be employed to carry out the necessary research and analysis.

83. In its resolution of 5 July 2001 on the situation as regards fundamental rights in the European Union, the European Parliament recommended that "a network be set up consisting of legal experts who are authorities on human rights and jurists from each of the Member States, to ensure a high level of expertise and enable Parliament to receive an assessment of the implementation of each of the rights laid down notably in the Charter, taking account of developments in national laws, the case law of the Court of Justice of the European Communities and the European Court of Human Rights and any notable case law of the Member States' national and constitutional courts"[37]. A Network of Independent Experts on Fundamental Rights ("the Network") has been set up and submitted its first report on 31 March 2003. Its tasks include preparing an annual report on the situation as regards fundamental rights in the European Union. In this connection, it is examining compliance with Articles 47 and 48 of the CFREU[38]. Article 47 CFREU provides: "Everyone is entitled to a fair and public hearing within a reasonable time by an independent and impartial tribunal

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37 European Parliament resolution on the situation as regards fundamental rights in the European Union (2000) (2000/2231(INI)).

38 OJ C 364 of 18.12.2000.

previously established by law. Everyone shall have the possibility of being advised, defended and represented. Legal aid shall be made available to those who lack sufficient resources insofar as such aid is necessary to ensure effective access to justice." Article 48 CFREU provides "[…] Respect for the rights of the defence of anyone who has been charged shall be guaranteed".

84. It could be appropriate to make use of the evaluation carried out by the Network in respect of Articles 47 and 48 of the CFREU and to assess whether this could be a suitable long-term solution. The Commission may subsequently decide upon a different system of evaluation and monitoring. If the Network were to cease to carry out its functions, or to provide the necessary services, or the Commission were to decide upon a different system of evaluation and monitoring, another suitable body could be appointed to analyse the data and information provided by the Member States in accordance with the provisions of the Framework Decision.

85. Evaluation and monitoring will benefit all Member States. It will enable them to show other countries that they observe fair trial rights and it will enable them to reassure those implementing the measures of the Mutual Recognition Programme in their home State, should such reassurance prove necessary, that safeguards ensuring equivalent fair trial standards are operated in other Member States. The evaluation shall be for the purpose of general assessment, and decisions of courts will not be examined.

Article 16 - Duty to collect data

86. In order for the Framework Decision to be monitored, and for the necessary evaluation of compliance to be carried out, Article 16 places an obligation on Member States to collect relevant data and this data must also be analysed in order to be meaningful. Member States must provide relevant statistics, *inter alia*, as regards the following:

(a) the total number of persons questioned in respect of a criminal charge, the number of persons charged with a criminal offence, whether legal advice was given and in what percentage of cases it was given free or partly free,

(b) the number of persons questioned in respect of a criminal offence and whose understanding of the language of the proceedings was such as to require the services of an interpreter during police questioning. A breakdown of the nationalities should also be recorded, together with the number of persons requiring sign language interpreting,

(c) the number of persons questioned in respect of a criminal offence who were foreign nationals and in respect of whom consular assistance was sought. The number of foreign suspects refusing the offer of consular assistance should be recorded. A breakdown of the nationalities of the suspects should also be recorded,

(d) the number of persons charged with a criminal offence and in respect of whom the services of an interpreter were requested before trial, at trial and/or at any appeal proceedings. A breakdown of the nationalities and the languages involved should also be recorded,

(e) the number of persons charged with a criminal offence and in respect of whom the services of a translator were requested in order to translate documents before trial, at trial or during any appeal proceedings. A breakdown of the nationalities and the languages involved should also be recorded. The number of persons requiring a sign language interpreter should be recorded,

(f) the number of persons questioned and/or charged in connection with a criminal offence who were deemed not to be able to understand or follow the content or the meaning of the proceedings owing to age, mental, physical or emotional condition, together with statistics about the type of any specific attention given,

(g) the number of Letters of Rights issued to suspects and a breakdown of the languages in which these were issued.

Article 17 - Non-regression clause

87. The purpose of this Article is to ensure that the Framework Decision does not have the effect of lowering standards in Member States. During the consultation phase, representatives of certain Member States expressed concern that this would result from setting common minimum standards. Member States remain entirely at liberty to set standards higher than those agreed in this Framework Decision.

Article 18 - Implementation

88. This Article requires that Member States must implement the Framework Decision by 1 January 2006 and, by the same date, send the text of the provisions transposing it into national law to the Council Secretariat General and the Commission. Six months after implementation, the Commission must 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 Framework Decision, accompanied, if necessary, by legislative proposals.

Article 19 - Entry into Force

89. This Article provides that the Framework Decision will enter into force on the twentieth day following that of its publication in the Official Journal of the European Union.

Annex A - model common wording to be used in the "Letter of Rights"

90. Annex A provides a model for the common wording to be used in the "Letter of rights". It sets out as headings the rights stemming from this Framework Decision and that the Commission considers to be the basic common rights that a suspect should be given on arrest (right to legal advice, right to an interpreter, decision on specific attention, right to communicate with consular authorities for foreigners).

2004/0113 (CNS)

Propozycja

DECYZJI RAMOWEJ RADY

w sprawie niektórych praw proceduralnych w postępowaniu karnym w Unii Europejskiej

RADA UNII EUROPEJSKIEJ,

uwzględniając Traktat o Unii Europejskiej, w szczególności zaś jego art. 31 ust. 1 lit. c),

uwzględniając wniosek Komisji[39],

uwzględniając opinię Parlamentu Europejskiego[40],

a także mając na uwadze, co następuje:

(1) Unia Europejska postawiła sobie za cel utrzymanie i rozwój przestrzeni wolności, bezpieczeństwa i sprawiedliwości. Zgodnie z wnioskami z posiedzenia Rady Europejskiej w Tampere z dnia 15 i 16 października 1999 r., a zwłaszcza ich pkt. 33, zasada wzajemnego uznawania powinna stać się "kamieniem węgielnym" współpracy sądowej zarówno w sprawach cywilnych, jak i karnych w obrębie Unii;

(2) dnia 29 listopada 2000 r. Rada, zgodnie z wnioskami z Tampere, przyjęła program środków wdrażających zasadę wzajemnego uznawania w sprawach karnych[41]. We wprowadzeniu do programu środków stwierdza się, że wzajemne uznawanie "ma na celu wzmocnienie współpracy między Państwami Członkowskimi, ale także zwiększenie ochrony praw indywidualnych"[42];

(3) wdrożenie zasady wzajemnego uznawania decyzji w sprawach karnych zakłada, że Państwa Członkowskie mają wzajemne zaufanie do swoich systemów wymiaru sprawiedliwości w sprawach karnych. Zakres wzajemnego uznawania w znacznym stopniu zależy od liczby parametrów, które decydują o skuteczności tego procesu.[43] Parametry te obejmują "mechanizm zabezpieczenia praw […] podejrzanych" (parametr 3) oraz "wspólne minimalne standardy niezbędne dla ułatwienia stosowania zasady wzajemnego uznawania";

(4) zasada wzajemnego uznawania może skutecznie działać jedynie w duchu zaufania, gdy nie tylko organy sądowe, ale wszyscy uczestnicy procesu karnego postrzegają decyzji organów sądowych innego Państwa Członkowskiego jako równoważnych z

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[39] Dz.U. C […], […], str. […].
[40] Dz.U. C […], […], str. […].
[41] Dz.U. C 12 z 15.1.2001, str. 10.
[42] Dz.U. C 12 z 15.1.2001, str. 10.
[43] Dz.U. C 12 z 15.1.2001, str. 10.

ich własnymi i nie kwestionują zdolności sądowej tych organów i poszanowania praw do bezstronnego procesu. Jest to istotne dla zwiększenia stopnia ogólnego postrzegania wzajemnego uznawania, które jest pozytywne i wymaga "nie tylko zaufania do tego, że przepisy partnera są właściwe, ale także ufności, że są one stosowane prawidłowo"[44];

(5) wszystkie Państwa Członkowskie są stronami Europejskiej Konwencji o Ochronie Praw Człowieka i Podstawowych Wolności (ECHR). Niemniej jednak doświadczenie pokazuje, że mimo potrzeby takiego zaufania, nie zawsze obdarza się nim wystarczająco systemy wymiaru sprawiedliwości w sprawach karnych innych Państw Członkowskich, i to bez względu na fakt, że wszystkie te państwa są sygnatariuszami ECHR. Proponowane prawa będą działać na rzecz wzmocnienia wzajemnego zaufania, a tym samym poprawy funkcjonowania zasady wzajemnego uznawania;

(6) decyzja ramowa Rady z dnia 13 czerwca 2002 r. w sprawie europejskiego nakazu aresztowania i procedury wydawania osób między Państwami Członkowskimi[45] była pierwszym konkretnym środkiem w dziedzinie prawa karnego wprowadzającym zasadę wzajemnego uznawania. Po tej decyzji przyjęto decyzję ramową w sprawie postanowień o zabezpieczeniu mienia i środków dowodowych[46]. Inne planowane środki w programie odnoszą się do nakazów konfiskaty, kar pieniężnych oraz przekazywania dowodów i rejestrów karnych;

(7) zasada wzajemnego uznawania jest oparta na wysokim poziomie zaufania między Państwami Członkowskimi. W celu zwiększenia tego zaufania, niniejsza decyzja ramowa ustanawia niektóre środki zabezpieczające w celu ochrony praw podstawowych. Środki te odzwierciedlają tradycje Państw Członkowskich w stosowaniu postanowień ECHR;

(8) zamiarem proponowanych przepisów nie jest wywarcie wpływu na szczególne środki obowiązujące w ustawodawstwach krajowych w kontekście walki z niektórymi formami poważnych i złożonych przestępstw, w szczególności z terroryzmem.

(9) Art. 31 ust. 1 lit. c) Traktatu o Unii Europejskiej przewiduje "zapewnianie, w zakresie niezbędnym do usprawnienia [współpracy sądowej w sprawach karnych], zgodności norm stosowanych w Państwach Członkowskich". Jeśli wspólne minimalne standardy będą stosowane wobec podstawowych zabezpieczeń proceduralnych w całej Unii Europejskiej, doprowadzi to do zwiększenia zaufania do systemów wymiaru sprawiedliwości w sprawach karnych wszystkich Państw Członkowskich, co z kolei spowoduje wzrost skuteczności współpracy sądowej w klimacie wzajemnego zaufania;

(10) określono pięć obszarów, w których wspólne standardy można zastosować w pierwszej kolejności. Są to: prawo dostępu do zastępstwa prawnego, prawo do usług w zakresie interpretacji i tłumaczenia, zapewniające, że osoby wymagające szczególnej uwagi, gdyż nie są w stanie śledzić przebiegu postępowania, otrzymają taką uwagę,

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44 COM(2000) 495 końcowy z 26.7.2000, str. 4.

45 Dz.U. L 190 z 18.7.2002, str. 1.

46 Decyzja ramowa Rady 2003/577/WSiSW z dnia 22 lipca 2003 r. w sprawie wykonywania w Unii Europejskiej postanowień o zabezpieczeniu mienia i środków dowodowych. Dz.U. L 196 z 2.8.2003, str. 45.

pomoc konsularna dla zatrzymanych cudzoziemców oraz powiadamianie podejrzanych i pozwanych o ich prawach na piśmie;

(11) pakiet środków zapewni, że prawa cudzoziemców będących podejrzanymi lub pozwanymi będą chronione nawet wówczas, gdy cudzoziemiec nie rozumie języka kraju przyjmującego ani nie posiada żadnej wiedzy o jego systemie wymiaru sprawiedliwości. Zapewnienie prawidłowego poszanowania praw cudzoziemców będących podejrzanymi i pozwanymi będzie miało podwójny efekt w postaci poprawy postrzegania przez każde Państwo Członkowskie systemów wymiaru sprawiedliwości pozostałych Państw Członkowskich oraz stopniowego eliminowania konsekwencji dla wszystkich podejrzanych i pozwanych;

(12) prawo do pomocy prawnej zapisane jest w art. 6 ECHR. Postanowienia niniejszej decyzji ramowej nie nakładają na Państwa Członkowskie zobowiązań wykraczających poza zakres ECHR, lecz jedynie określają wspólne sposoby zastosowania się do art. 6 ECHR. Określając moment powstania prawa do doradztwa prawnego należy określić sytuacje, w których doradztwo to powinno być bezpłatne. W niektórych przypadkach wymóg, aby postępowanie było sprawiedliwe, dyktuje, że pozwany powinien otrzymać doradztwo prawne, niezależnie od prawa do obrony własnej. Tak stanowi decyzja ramowa, wskazując jednocześnie, którzy pozwani powinni otrzymać doradztwo prawne, że doradztwo takie winni świadczyć odpowiednio wykwalifikowani specjaliści oraz fakt, że koszty doradztwa prawnego nie powinny powodować zbędnych utrudnień dla pozwanych lub osób pozostających na ich utrzymaniu. A zatem, od Państw Członkowskich wymaga się zapewnienia, aby koszty świadczenia doradztwa prawnego w takich okolicznościach pokrywały, w całości lub części, ich systemy wymiaru sprawiedliwości;

(13) art. 6 ECHR przewiduje prawo do bezpłatnej i poprawnej pomocy językowej – interpretacji i tłumaczenia – dla cudzoziemców oraz, w miarę konieczności, dla osób cierpiących na upośledzenia słuchu lub mowy. Postanowienia niniejszej decyzji ramowej nie nakładają na Państwa Członkowskie zobowiązań wykraczających poza zakres ECHR, lecz jedynie określają wspólne sposoby zastosowania się do art. 6 ECHR, zgodnie z orzecznictwem Europejskiego Trybunału Praw Człowieka oraz weryfikacji, że zapewniona interpretacja i tłumaczenie są poprawne;

(14) obowiązek pieczy nad osobami podejrzanymi, które nie są w stanie rozumieć lub śledzić przebiegu postępowania leży u podstaw prawidłowego funkcjonowania administracji wymiaru sprawiedliwości. W przypadku, gdy osoba podejrzana jest w potencjalnie słabej pozycji ze względu na swój wiek, stan umysłowy, fizyczny lub emocjonalny, przewaga sił leży po stronie oskarżyciela, organów sądowych lub ścigania. Organy te powinny zatem być świadomie potencjalnej bezbronności takich osób i podjąć odpowiednie kroki pomagające przywrócić równowagę sił. Stosownie do tego, postanowienia niniejszej decyzji ramowej mają na celu poprawić pozycję tych osób poprzez ustanowienie niektórych szczególnych praw;

(15) prawo osób zatrzymanych do niezwłocznego poinformowania rodziny, osób przysposobionych jako członkowie rodziny oraz pracodawców o zatrzymaniu ustanawia się w przypadku, gdy przekazanie takiej informacji nie utrudnia prowadzenia postępowania. Ustanawia się także prawo do kontaktu z właściwymi urzędami konsularnymi. W szerszym kontekście, chodzi o prawo osoby zatrzymanej do kontaktu ze światem zewnętrznym;

(16) prawo do pomocy konsularnej istnieje na mocy art. 36 Konwencji wiedeńskiej o stosunkach konsularnych z 1963 r., gdzie sformułowano je jako nadane państwom prawo porozumiewania się ze swoimi obywatelami. Postanowienia niniejszej decyzji ramowej nadają to prawo obywatelom Europy raczej niż państwu. Zwiększają jego widoczność, a tym samym skuteczność. A zatem, w dłuższym terminie stworzenie przestrzeni wolności, bezpieczeństwa i sprawiedliwości na zasadzie wzajemnego zaufania między Państwami Członkowskimi powinno zredukować, a w ostatecznym rozrachunku znieść potrzebę pomocy konsularnej;

(17) powiadamianie podejrzanych i pozwanych o ich podstawowych prawach na piśmie jest środkiem zapewniającym większą bezstronność postępowania i w pewien sposób gwarantującym, że każda osoba podejrzana lub oskarżona o przestępstwo karne, jest świadoma swoich praw. Jeżeli podejrzani lub pozwani nie są świadomi swoich praw, o wiele trudniej jest im domagać się korzyści z nich wynikających. Pisemne powiadomienie podejrzanych o ich prawach za pomocą prostego "Pouczenia o prawach podejrzanego" rozwiąże ten problem;

(18) konieczne jest ustanowienie mechanizmu oceny skuteczności niniejszej decyzji ramowej. A zatem, Państwa Członkowskie powinny gromadzić i zapisywać informacje w celu oceny i monitorowania. Zgromadzone informacje zostaną wykorzystane przez Komisję przy sporządzaniu sprawozdań, które zostaną udostępnione publicznie. To zwiększy wzajemne zaufanie, gdyż każde Państwo Członkowskie będzie wiedziało, że pozostałe Państwa Członkowskie przestrzegają prawa do bezstronnego procesu;

(19) w związku z tym, że Państwa Członkowskie działając jednostronnie nie mogą osiągnąć celu w postaci opracowania wspólnych minimalnych standardów, który może zostać osiągnięty jedynie na poziomie Unii, Rada może przyjąć środki zgodne z zasadą pomocniczości, o której mowa w art. 2 Traktatu o Unii Europejskiej i art. 5 Traktatu ustanawiającego Wspólnotę Europejską. Zgodnie z zasadą proporcjonalności, określoną w tym ostatnim artykule, niniejsza decyzja ramowa nie wykracza poza to, co jest niezbędne dla osiągnięcia tego celu;

(20) niniejsza decyzja ramowa ma na celu wzmocnienie podstawowych praw i zasad uznanych w art. 6 Traktatu o Unii Europejskiej i odzwierciedlonych w Karcie Praw Podstawowych Unii Europejskiej, a w szczególności w jej art. 47 – 50. Nie może ona prowadzić do rozbieżnych wykładni ustawowych odpowiednich postanowień ECHR, gdyż odniesienie do praw podstawowych w art. 6 Traktatu o Unii Europejskiej jest bezwzględnie uwarunkowane ich interpretacją w orzecznictwie Europejskiego Trybunału Praw Człowieka.

PRZYJMUJE NINIEJSZĄ DECYZJĘ RAMOWĄ:

W SPRAWIE NIEKTÓRYCH PRAW PROCEDURALNYCH W POSTĘPOWANIU KARNYM W UNII EUROPEJSKIEJ

Artykuł 1

Zakres stosowania praw proceduralnych

1. Niniejsza decyzja ramowa ustanawia następujące przepisy dotyczące praw proceduralnych mające zastosowanie we wszystkich postępowaniach toczących się w Unii Europejskiej, których celem jest ustalenie winy lub niewinności osoby podejrzanej o popełnienie przestępstwa karnego lub zadecydowanie o skutkach przyznania się do winy w związku z oskarżeniem o przestępstwo karne. Decyzja obejmuje także wszelkie odwołania wnoszone w tych postępowaniach.

   Postępowania takie zwane są w dalszej części "postępowaniami karnymi".

2. Prawa mają zastosowanie wobec osób podejrzanych o popełnienie przestępstwa karnego ("podejrzany") od momentu poinformowania tej osoby przez właściwe władze Państwa Członkowskiego, że jest ona podejrzana o popełnienie przestępstwa karnego do czasu wydania ostatecznego wyroku.

Artykuł 2

Prawo do doradztwa prawnego

1. Jeśli podejrzany pragnie otrzymać doradztwo prawne, ma prawo do jego otrzymania tak szybko, jak to możliwe i w toku całego postępowania karnego.

2. Podejrzany ma prawo do porady prawnej przed udzieleniem odpowiedzi na pytania w związku z oskarżeniem.

Artykuł 3

Obowiązek świadczenia doradztwa prawnego

Bez względu na prawo podejrzanego do odmowy doradztwa prawnego lub przedstawiciela reprezentującego go w postępowaniu wymaga się oferowania takiego doradztwa niektórym podejrzanym, aby zapewnić bezstronność w postępowaniu. Zgodnie z powyższym, Państwa Członkowskie zapewniają, że doradztwo prawne jest dostępne dla podejrzanego, który:

– został odesłany do aresztu śledczego przed rozprawą, lub

– jest formalnie oskarżony o popełnienie przestępstwa karnego, któremu towarzyszą złożone okoliczności faktyczne lub prawne, bądź które podlega ciężkiej karze, zwłaszcza gdy Państwo Członkowskie przewiduje nakazany ustawą wyrok skazujący na karę pozbawienia wolności na okres powyżej jednego roku,

– jest przedmiotem Europejskiego Nakazu Aresztowania, wniosku o ekstradycję lub innej procedury przekazywania osób,

– jest niepełnoletni, lub

– wydaje się być niezdolnym do rozumienia lub śledzenia treści lub znaczenia postępowania ze względu na swój wiek, stan umysłowy, fizyczny lub emocjonalny.

Artykuł 4

Obowiązek zapewnienia skuteczności doradztwa prawnego

1. Państwa Członkowskie zapewnią, aby prawo do świadczenia doradztwa prawnego zgodnie z niniejszą decyzją ramową przysługiwało jedynie prawnikom określonym w art. 1 ust. 2 lit. a) dyrektywy 98/5/WE[47].

2. Państwa Członkowskie zapewnią wprowadzenie mechanizmu zastąpienia danego prawnika innym prawnikiem, jeśli udzielone doradztwo prawne okaże się nieskuteczne.

Artykuł 5

Prawo do bezpłatnego doradztwa prawnego

1. W przypadkach, w których ma zastosowanie art. 3, koszty doradztwa prawnego ponoszą, w całości lub części, Państwa Członkowskie, jeśli koszty te spowodowałyby niepotrzebne trudności finansowe dla podejrzanego lub osób pozostających na jego utrzymaniu.

2. Państwa Członkowskie, mając na względzie odzyskanie części kosztów doradztwa prawnego mogą przeprowadzić, w późniejszym terminie, dochodzenie w celu ustalenia, czy środki, jakie posiada podejrzany pozwalają mu na uczestniczenie w kosztach doradztwa prawnego.

Artykuł 6

Prawo do bezpłatnego tłumaczenia ustnego

1. W celu zapewnienia bezstronności w postępowaniu, Państwa Członkowskie zapewnią, aby podejrzanemu, który nie rozumie języka postępowania, zagwarantowano bezpłatne tłumaczenie ustne jego przebiegu.

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47 Dyrektywa 98/5/WE Parlamentu Europejskiego i Rady z dnia 16 lutego 1998 r.

2. Państwa Członkowskie zapewnią, że w miarę konieczności podejrzany otrzyma bezpłatne tłumaczenie porad prawnych udzielanych w toku postępowania karnego.

3. Prawo do bezpłatnego tłumaczenia przysługuje osobom z upośledzeniami słuchu lub mowy.

Artykuł 7

Prawo do bezpłatnego tłumaczenie dokumentów związanych z postępowaniem

1. W celu zapewnienia bezstronności w postępowaniu, Państwa Członkowskie gwarantują, że podejrzany, który nie rozumie języka postępowania, otrzyma bezpłatne tłumaczenie wszystkich dokumentów związanych z postępowaniem.

2. Decyzję o tym, które dokumenty należy przetłumaczyć, podejmują właściwe władze. Adwokat pozwanego ma prawo zażądać przetłumaczenia kolejnych dokumentów.

Artykuł 8

Poprawność tłumaczenia pisemnego i ustnego

1. Państwa Członkowskie zapewnią, że zatrudnieni tłumacze będą dostatecznie wykwalifikowani, aby zapewnić poprawne tłumaczenie pisemne i ustne.

2. W przypadku, gdy tłumaczenie pisemne lub ustne okaże się niepoprawne, Państwa Członkowskie zapewnią wprowadzenie mechanizmu przewidującego zastąpienie danego tłumacza innym tłumaczem.

Artykuł 9

Nagrywanie przebiegu postępowania

W przypadku, gdy postępowanie prowadzone jest za pośrednictwem tłumacza, Państwa Członkowskie zapewnią nagranie jego przebiegu na kasetę audio lub wideo, w celu zapewnienia kontroli jakości. W przypadku sporu, stronom należy udostępnić zapis nagrania. Zapis można wykorzystać wyłącznie dla celów weryfikacji poprawności tłumaczenia.

Artykuł 10

Prawo do szczególnej uwagi

1. W celu zapewnienia bezstronności w postępowaniu Państwa Członkowskie zapewnią, aby podejrzanemu, który nie jest w stanie rozumieć lub śledzić treści lub znaczenia postępowania ze względu na swój wiek, stan umysłowy, fizyczny lub emocjonalny, poświęcono szczególną uwagę.

2. Państwa Członkowskie zapewnią, że właściwe władze zostaną zobowiązane do rozpatrywania i odnotowywania na piśmie potrzeb dotyczących szczególnej uwagi w toku postępowania, gdy tylko pojawią się jakiekolwiek oznaki, że art. 10 ust. 1 ma zastosowanie.

3. Państwa Członkowskie zapewnią, że każdy krok podjęty w konsekwencji tego prawa zostanie odnotowany na piśmie.

Artykuł 11

Prawa podejrzanych uprawnionych do szczególnej uwagi

1. Państwa Członkowskie zapewnią, że wszelkie przesłuchania osób podejrzanych uprawnionych do szczególnej uwagi zostaną nagrane na kasetę audio lub wideo. W przypadku sporu, stronom należy udostępnić zapis nagrania.

2. Państwa Członkowskie zapewnią, w razie potrzeby, pomoc medyczną.

3. W stosownych przypadkach, szczególna uwaga może obejmować prawo do obecności osoby trzeciej podczas przesłuchiwania przez policję lub organy sądowe.

Artykuł 12

Prawo do porozumiewania się

1. Podejrzany odesłany do aresztu śledczego ma prawo do tego, aby jego rodzina, osoby przysposobione jako członkowie rodziny oraz miejsce pracy zostały poinformowane o zatrzymaniu tak szybko, jak to możliwe.

2. Właściwe władze mogą porozumieć się z osobami określonymi w art. 12 ust. 1 używając odpowiednich mechanizmów, włącznie z urzędami konsularnymi, jeśli podejrzany jest obywatelem innego państwa i jeśli sobie tego życzy.

Artykuł 13

Prawo do porozumiewania się z władzami konsularnymi

1. Państwa Członkowskie zapewnią, aby zatrzymana osoba podejrzana, która nie jest obywatelem danego państwa, miała prawo do poinformowania władz konsularnych państwa rodzimego o zatrzymaniu tak szybko jak to możliwe oraz do porozumienia się z urzędem konsularnym, jeśli sobie tego życzy.

2. W przypadku, gdy zatrzymana osoba podejrzana nie życzy sobie pomocy władz konsularnych swojego państwa rodzimego, Państwa Członkowskie zapewnią, że osobie tej zostanie zaoferowana, jako alternatywa, pomoc uznanej międzynarodowej organizacji humanitarnej.

3. Państwa Członkowskie zapewnią, aby osobie zamieszkałej przez długi czas w Państwie Członkowskim UE a nie będącej jego obywatelem przysługiwało prawo do pomocy władz konsularnych tego państwa na takiej samej podstawie, jak jego obywatelom, jeśli osoba ta ma uzasadnione powody do tego, aby nie życzyć sobie pomocy władz konsularnych państwa, którego jest obywatelem.

Artykuł 14

Obowiązek poinformowania podejrzanego o jego prawach na piśmie – "Pouczenie o prawach podejrzanego"

1. Państwa Członkowskie zapewnią, aby wszyscy podejrzani byli informowani o prawach proceduralnych bezpośrednio ich dotyczących, w formie pisemnego powiadomienia. Informacja ta winna obejmować, między innymi, prawa określone w niniejszej decyzji ramowej.

2. Państwa Członkowskie zapewnią, aby powstało standardowe tłumaczenie pisemnego powiadomienia na wszystkie oficjalne języki Wspólnoty. Tłumaczenia powinny zostać sporządzone na szczeblu centralnym, a następnie wydane właściwym władzom w celu zapewnienia, aby ten sam tekst był stosowany w całym Państwie Członkowskim.

3. Państwa Członkowskie zapewnią, aby komisariaty policji posiadały tekst pisemnego powiadomienia we wszystkich oficjalnych językach Wspólnoty, by móc zaofiarować osobie aresztowanej kopię w zrozumiałym dla niej języku.

4. Państwa Członkowskie będą wymagały, aby zarówno oficer śledczy, jak i podejrzany, jeśli sobie tego życzy, podpisali "Pouczenie o prawach podejrzanego" jako dowód, że pouczenie to zostało zaofiarowane, wręczone i przyjęte. Pouczenie należy sporządzić w dwóch egzemplarzach, z czego jeden (podpisany) egzemplarz zachowuje oficer śledczy, zaś drugi (podpisany) egzemplarz pozostaje u podejrzanego. W aktach należy odnotować, że zaofiarowano pouczenie oraz czy podejrzany zgodził się je podpisać.

Artykuł 15

Ocena i monitorowanie skuteczności decyzji ramowej

1. Państwa Członkowskie ułatwią zebranie informacji niezbędnych dla oceny i monitorowania niniejszej decyzji ramowej.

2. Ocena i monitorowanie będą prowadzone pod nadzorem Komisji Europejskiej, która koordynuje sprawozdania z procesu oceny i monitorowania. Sprawozdania te mogą być publikowane.

Artykuł 16

Obowiązek gromadzenia danych

1. Aby można było prowadzić ocenę i monitorowanie przepisów niniejszej decyzji ramowej, Państwa Członkowskie zapewnią, aby były przechowywane i udostępniane dane takie, jak odpowiednie statystyki, obejmujące między innymi:

   (a) łączną liczbę osób przesłuchanych w związku z oskarżeniem, liczbę osób oskarżonych o przestępstwo karne, informację, czy zostało wyświadczone doradztwo prawne oraz w jakim odsetku spraw zostało ono udzielone bezpłatnie lub częściowo bezpłatnie,

   (b) liczbę osób przesłuchanych w związku z przestępstwem karnym, których stopień rozumienia języka postepowania wymagał usług tłumacza podczas przesłuchania przez policję. Należy także odnotować podział na narodowości oraz liczbę osób wymagających tłumaczenia na język migowy,

   (c) liczbę osób przesłuchanych w związku z przestępstwem karnym, będących obywatelami zagranicznymi, w odniesieniu do których zwracano się o pomoc konsularną. Należy odnotować liczbę podejrzanych będących cudzoziemcami, którzy odmówili przyjęcia pomocy konsularnej, jak również podział podejrzanych na narodowości,

   (d) liczbę osób oskarżonych o przestępstwo karne, dla których poproszono o usługi tłumacza przed rozprawą, w trakcie rozprawy oraz/lub w postępowaniu odwoławczym. Należy odnotować także podział tych osób na narodowości i języki,

   (e) liczbę osób oskarżonych o przestępstwo karne, dla których poproszono o usługi tłumacza w celu przetłumaczenia dokumentów przed rozprawą, w trakcie rozprawy oraz/lub w postępowaniu odwoławczym. Należy odnotować także podział tych osób na narodowości i języki, jak również liczbę osób wymagających usług tłumacza języka migowego,

   (f) liczbę osób przesłuchanych i/lub oskarżonych w związku z przestępstwem karnym, uznanych za niezdolnych do rozumienia lub śledzenia treści lub znaczenia postępowania ze względu na swój wiek, stan umysłowy, fizyczny lub emocjonalny, wraz z danymi statystycznymi na temat typu zapewnionej im szczególnej uwagi,

   (g) liczbę “Pouczeń o prawach podejrzanego” wydanych podejrzanym wraz z podziałem na języki, w których wydano pouczenia.

2. Ocena i monitorowanie będą prowadzone w regularnych odstępach czasu, w formie analizy danych dostarczonych w tym celu i zgromadzonych przez Państwa Członkowskie zgodnie z postanowieniami niniejszego artykułu.

Artykuł 17

Klauzula o braku regresji

Żadne z postanowień niniejszej decyzji ramowej nie może być rozumiane jako ograniczające lub naruszające prawa i proceduralne środki zabezpieczające zapewnione przez prawo Państwa Członkowskiego, które zapewnia wyższy stopień ochrony.

Artykuł 18

Wykonanie

1. Państwa Członkowskie podejmą środki niezbędne w celu zachowania zgodności z przepisami niniejszej decyzji ramowej do dnia 1 stycznia 2006 r..

2. W tym samym terminie, Państwa Członkowskie przekażą Sekretariatowi Generalnemu Rady i Komisji teksty przepisów transponujących do ich prawa krajowego zobowiązania nałożone na nie zgodnie z niniejszą decyzją ramową.

3. Do 30 czerwca 2006 r. Komisja przedłoży Parlamentowi Europejskiemu i Radzie sprawozdanie z oceny stopnia, w jakim Państwa Członkowskie podjęły środki niezbędne do zastosowania się do niniejszej decyzji ramowej załączając do niego, w razie potrzeby, wnioski legislacyjne.

4. Na podstawie sprawozdania Komisji Rada oceni zakres, w jakim Państwa Członkowskie zastosowały się do niniejszej decyzji ramowej pod względem jej wykonania.

5. Regularna ocena i monitorowanie funkcjonowania przepisów niniejszej decyzji ramowej prowadzona będzie zgodnie z art. 15 powyżej.

Artykuł 19

Wejście w życie

Niniejsza decyzja ramowa wchodzi w życie dwudziestego dnia po jej opublikowaniu w *Dzienniku Urzędowym Unii Europejskiej*.

Sporządzono w Brukseli, […]

W imieniu Rady
Przewodniczący

Załącznik A

kopia dla podejrzanego/kopia do akt aresztu śledczego

Pouczenie o prawach podejrzanego w języku [wstawić język]

Panie/Pani [wstawić nazwisko], jest Pan/Pani osobą podejrzaną w związku z [przestępstwo karne X].

A. Pouczenie o prawach zgodnie z decyzją ramową Rady …/…/WSiSW z dnia…

Prawo Unii Europejskiej wymaga od wszystkich Państw Członkowskich Unii zagwarantowania wspólnych minimalnych standardów w odniesieniu do niektórych praw. Prawa te są wymienione poniżej, wraz z przepisami krajowymi, które stosują te prawa, a w niektórych przypadkach gwarantują dodatkową ochronę.

1. **Doradztwo prawne** [Patrz przypis[48]]

2. **Prawo do tłumacza** [Patrz przypis]

3. **Prawo do tłumaczenia dokumentów związanych z postępowaniem** [Patrz przypis]

4. **Szczególna uwaga** [Patrz przypis]

5. **Porozumiewanie się** [Patrz przypis]

B. Inne prawa

Zgodnie z prawem krajowym Państwa Członkowskiego miejsca pobytu ma Pan/Pani zagwarantowane następujące prawa.

48 Państwa Członkowskie powinny wstawić własne teksty obejmujące przepisy prawa krajowgo dotyczące tego prawa, włącznie z przepisami wdrażającymi wspólne minimalne standardy zgodnie z decyzją ramową oraz inne postanowienia wykraczające poza ów standard minimalny.

[Niniejsza część dotyczy praw innych niż określone w polu A. Państwa Członkowskie powinny wstawić w tej części własne teksty.]

Podpis: …………………….. oficer śledczy

…………………….. osoba aresztowana

data:

Niniejsze pouczenie sporządzono w dwóch egzemplarzach, z których jeden otrzymuje podejrzany, zaś drugi pozostaje w aktach aresztu śledczego.