



Joint Position on Procedural Safeguards

1. Our organisations have advocated the need for a framework decision on defence rights since the proposal for a European arrest warrant. We have steadfastly called for such a mechanism and argued for the retention of the initially proposed five rights together with the review mechanism throughout the previous Council negotiation round. We have contributed to the recent discussions on renewed action in this area and projects to demonstrate the need for effective defence rights. We consider it imperative that if the European Union is to continue to promote mutual recognition in the area of criminal matters, a set of standard procedural safeguards for the investigation and prosecution of a suspect must be enacted. This will create a much needed legal benchmark to address and monitor the failure to protect rights that persists across European Member States which currently consider this outside of their responsibility or sphere of competence.
2. We therefore welcome the renewed attention that the Swedish Presidency has provided in this area, and the commitment it has displayed to achieving a common set of standards. In principle, we support the right-by-right approach as a genuine attempt by the Member States to prioritise the adoption of a coherent set of procedural safeguards.
3. We understand that the right-by-right approach aims to enable focussed attention on each measure in the hope that consensus can be reached. We consider that this

approach is sensible, given the previous difficulties experienced by the Council in this area. We agree that the priority rights identified are indeed fundamental procedural rights.

4. We have prepared this joint position to indicate through our collective experience the approach we consider is essential in order to guarantee the adoption of effective standards for suspects and defendants.

The Roadmap

5. The Swedish Presidency *Roadmap with a view to fostering protection of suspected and accused persons in criminal proceedings* (the Roadmap), presented on 1 July 2009 intends to build upon the European Convention on Human Rights and Fundamental Freedoms *'to expand existing standards or to make their application more uniform.'* The Presidency Note (the Note) presenting the Roadmap succinctly and persuasively explains why those rights are required in an area of free movement for travel, study and work. It acknowledges that despite greater interaction between Member States, citizens of one state still know very little about their legal rights in another and how to access these. This, and the successful development of mutual recognition of judicial decisions in criminal matters require enforceable Europe-wide defence standards.
6. The Note invites the Council to make a statement that it *'agrees that the measures listed in the "roadmap on procedural rights" should be examined and adopted with a view to creating a set of procedural rights fostering the protection of suspected and accused persons in criminal proceedings....'* and that *'The Council will examine all proposals presented in the context of the roadmap and pledges to deal with them as matters of priority.'*
7. We welcome the explanation of the purpose of the Roadmap provided in the Note. We do however have real concerns about the mechanism through which this priority area is proposed to be implemented.
8. On 10 June 2009 the Commission presented the Communication on *An area of freedom, security and justice serving the citizen* for the future Stockholm Programme to the European Parliament and the Council. This document will set priorities for European Union action in the area of freedom, security and justice for the next five

years. On 23 June 2009 the Swedish Presidency published its Work Programme.¹ Neither of these documents devotes much attention to procedural safeguards. Indeed, there is only one paragraph in each document acknowledging the issue. There is no mention of a set of rights or right-by-right approach. The Work Programme does not mention the Roadmap at all.

9. If action in this area is genuinely a priority for the Justice and Home Affairs Council, we query why the Roadmap could not be incorporated into the Stockholm Programme? This would give it equal footing to the other identified goals, require endorsement by the European Council and be incorporated into the subsequent Action Plan which the Spanish Presidency will orchestrate. Absent explicit mention, more pressing matters may be identified within the Stockholm Programme which will marginalise this already isolated measure.
10. The Roadmap provides that the order in which measures are presented is indicative, yet there is no timeframe envisaged, nor is it clear what type of instrument is envisaged or if these individual measures are to be considered consecutively or concurrently. We advocate a clear plan through which focus on the adoption of binding legislative instruments for each right is maintained and hope consensus on a such Roadmap will be achieved.
11. **However, if the Roadmap is to have any future beyond this Presidency and if any other safeguards are to be considered at all, the priority that procedural safeguards hold must be spelt out in detail in the Stockholm Programme and in the subsequent Action Plan. We call for the Roadmap to be incorporated into the Stockholm Programme, thus providing the highest political endorsement of its importance and a finite five year timeframe for adoption of measures to protect these acknowledged fundamental rights.**

Safeguards

12. We are relieved to see that the Roadmap replicates the priority rights originally envisaged by the Commission in its 2004 Proposal on certain procedural rights in criminal proceedings throughout the European Union. We agree that these rights are of particular importance in the provision of safeguards for suspects.

¹ www.se2009.eu

13. It is also encouraging that the Roadmap indicates a second area for action would cover not only the 'Letter of Rights' but also access to the file, and information on the nature and cause of the accusation being made.
14. The Member States will surely accept both initial measures, interpretation and translation followed by information on rights and charges, as essential, and accordingly we hope that they can reach speedy agreement to adopt framework decisions on these issues.
15. We notice however, for example, the 'Short Explanation' to Interpretation and Translation identifies 'essential procedural documents' as the focus of translation, with no parameters identified for interpretation. There is no indication that the service ought to be provided by the State and without charge to the suspect or defendant. We hope that these omissions are rectified in the Proposal for a Council Framework Decision on Interpretation and Translation, and welcome an opportunity to review the Proposal.
16. Furthermore, whilst the Roadmap states that the promotion of procedural rights is a priority, the work programme for the Swedish Presidency mentions only the right to interpretation and translation. Equally, neither of these initial measures addressing the right to interpretation, translation or information about rights is of any use if the individual concerned does not have a lawyer to explain and challenge the legal ramifications of the information being disclosed to them. We consider that it must be borne in mind at each stage that these measures do not exist in a vacuum, but complement each other in providing a set of fundamental rights. **We call upon the Council Working Group to consider firstly the interaction between each envisaged measure to ensure provision of all safeguards, and secondly the importance of striving toward a binding instrument on legal representation, in particular, as soon as possible.**
17. Furthermore, we have real concerns that in an effort of compromise, the binding requirements of each legal instrument may be condensed to the briefest of statements only, with the practical detail being relegated to best practice guidance. Such an approach would result in an imbalance between those instruments that obligate closer cooperation on prosecution of crime, and those that secure defence protection. It would also in our view subvert the intentions of mutual recognition in that

each Member State would continue to be free to develop or limit action according to its respective political agenda. Rather than fostering the development of a uniform approach to protecting defence rights, this may even lead to greater divergence of approach. Moreover, the Commission review of implementation of any adopted legal instrument, will open up the practice in each Member State to scrutiny by its counterparts. Where the approach is not uniform, it may increase non-recognition of a request from a Member State made under the multiple instruments in force.

18. We recall priority 9 (*Civil and criminal justice: guaranteeing an effective European area of justice for all*) of the Communication from the Commission on the Hague Programme: *Ten Priorities for the next five years*,²

A European area of justice is more than an area where judgements obtained in one Member State are recognised and enforced in other Member States, but rather an area where effective access to justice is guaranteed in order to obtain and enforce judicial decisions. To this end, the Union must envisage not only rules on jurisdiction, recognition and conflict of laws, but also measures which build confidence and mutual trust among Member States, creating minimum procedural standards and ensuring high standards of quality of justice systems, in particular as regards fairness and respect for the rights of defence.

19. **We therefore call on the Council Working Group to strive to incorporate as much content as possible in all future EU instruments to ensure that legally binding measures are adopted providing meaningful protection to suspects and defendants across the EU.**

July 2009

² COM/2005/0184 final, <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=CELEX:52005PC0184:EN:HTML>