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COMMISSION STAFF WORKING DOCUMENT

IMPACT ASSESSMENT

accompanying the

Proposal for a

DIRECTIVE OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL

on the right to information in criminal proceedings

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COMMISSION STAFF WORKING DOCUMENT

IMPACT ASSESSMENT

CONTENTS

1. INTRODUCTION

*The impact assessment is for a measure on the right to information for suspects and accused persons[1] in criminal proceedings. Someone who is subject to criminal proceedings is entitled to know **what his rights are** and **of what he is accused.** Member States differ in the amount of information they give to suspects and accused persons and the way in which information is transmitted (orally, in writing or by some other means). This is true both for information about rights (such as the right to have legal advice or the services of an interpreter for those who don't understand or speak the language of the proceedings) and information about the charges.*

If someone is arrested or required to attend a police station in connection with an enquiry into a crime, they have certain rights, such as the right to consult a lawyer or to have an interpreter present if they are a foreigner who does not speak the language of the proceedings. Sometimes suspects or accused persons are not informed of these rights, so they might not be able to avail themselves of those rights, jeopardising the fairness of proceedings. In this sense, provision of information on the rights can be seen as a "gateway" to effective use of those rights. Legislation and practice on the way in which information is transmitted vary significantly from one Member State to another.

Instances of failure to provide information are undermining trust in the fairness of criminal proceedings conducted in other Member States. Perceptions of potential unfairness hamper cooperation in criminal matters between Member States which is based on mutual recognition of judicial decisions across the EU. This can affect the application of mutual recognition instruments, for instance the European Arrest Warrant, under which a Member State is expected to surrender suspects or convicted persons, including its nationals, rapidly and without examination of the case file, for trial or to serve a custodial sentence in another Member State.

The right to a fair trial is a fundamental right which the European Union respects as a general principle by reference to the European Convention on Human Rights (ECHR) under Article 6 (3) TEU. Whilst it is laid down in the Charter of Fundamental Rights of the European Union (Article 47 - Right to an effective remedy and to a fair trial, Article 48 – Rights of the defence and presumption of innocence)[2] and in Article 6 of the ECHR, this has proved not to be sufficient to achieve the necessary level of mutual trust.

This impact assessment accompanies the Commission's proposal for the second step (Measure B) in the Roadmap on Procedural Rights, on information on rights and information on charges.

2. PROCEDURAL ISSUES AND CONSULTATION OF INTERESTED PARTIES

2.1. Policy context

To increase mutual trust, and thus improve the operation of mutual recognition, in November 2009 the European Council adopted the Roadmap on Procedural Rights[3] (Annex I, "the Roadmap") setting out a step-by-step approach to strengthening the rights of suspects and accused persons. This was incorporated into the Stockholm Programme[4] the following month. The Commission adopted a proposal for the first step, the right to interpretation and translation, in July 2009.

In the Roadmap, the Council requests the Commission to submit proposals on a number of measures to establish common minimum standards for fair trial rights in the EU.

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1 A suspect is someone who is suspected of having committed a criminal offence but has not yet been formally charged. An accused person is someone who has been formally charged with an offence. Their rights are different according to their status. However, both categories are entitled to certain information.

2 Since 1 December 2009 the Charter is legally binding and has the same legal value as the EU Treaties.

3 2009/C 295/01

4 'An open and secure Europe serving and protecting the citizen' adopted December 2009.

Each measure will deal with a distinct procedural right or set of rights of suspects and accused persons which had been identified by Member States and stakeholders alike as needing to be strengthened by action at EU level. Each measure thus has to be considered as a building-block for a whole edifice. Measures may consist of binding legislation applying to each and every suspect in criminal proceedings in all Member States, thus protecting EU citizens and third-country nationals alike both in cross-border proceedings as well as in purely domestic cases. Such legislation may clarify existing rights or even create new ones, but only in relation to the respective specific issue each measure is supposed to address. The rights of suspects and defendants throughout the EU will therefore be strengthened sty-by-step as set out below:

Measures envisaged in the Roadmap:
Measure A: Translation and Interpretation
Measure B: Information on Rights and Information about the Charges
Measure C: Legal Advice and Legal Aid
Measure D: Communication with Relatives, Employers and Consular Authorities
Measure E: Special Safeguards fur Suspected or Accused Persons who are Vulnerable[5]
Measure D: Green Paper on Pre-Trial Detention

The measure covered by this Impact Assessment is "Measure B" which aims to improve the situation of suspects by ensuring that these individuals receive information about their defence rights and about the case against them in the course of criminal proceedings:

"Measure B: Information on Rights and Information about the Charges

Short explanation: A person that is suspected or accused of a crime should get information on his/her basic rights orally or, where appropriate, in writing, e.g. by way of a Letter of Rights. Furthermore, that person should also receive information promptly about the nature and cause of the accusation against him or her. A person who has been charged should be entitled, at the appropriate time, to the information necessary for the preparation of his or her defence, it being understood that this should not prejudice the due course of the criminal proceedings."

2.2. Chronology of the Impact Assessment

2.2.1. Consultation of stakeholders

Stakeholders were consulted on several occasions. The Commission has regular and frequent contact with major stakeholders: European Criminal Bar Association, Council of Bars and Law Societies of Europe, national Bar associations, European Network of Councils of the Judiciary, academics, NGOs such as JUSTICE, Amnesty International and Fair Trials International. The Commission has been researching this area of criminal law for over 7 years. It issued a Green Paper on procedural safeguards in February 2003[6] and has been consulting interested parties ever since; it has thus accumulated a body of information and views on what experts consider would promote fairer trials and greater mutual trust between Member States.

5 This measure will address the rights of juvenile suspects and accused persons in criminal proceedings.

6 Green Paper on procedural safeguards, COM (2003) 75 of 19.2.2003

A Justice Forum[7] meeting was held in July 2008 to canvas views on the Université Libre de Bruxelles (ULB) study on mutual recognition[8] (see 2.2.2 (e) below). Most participants expressed their continuing wish to see legislation at EU level on procedural safeguards. There also was a 2-day experts' meeting devoted to procedural rights in March 2009. A Justice Forum meeting in November 2009 was devoted to Measures A and B of the Roadmap. Professor Spronken outlined the findings of the Letter of Rights project (see 2.2.2.(b) below).

2.2.2. Studies and publications

The IA relies on the findings of five separate studies carried out from 2007 to 2010:

(a) An external study to gather evidence for this IA was commissioned in December 2009. The study, carried out by consultants Matrix Knowledge, focused on policy options and costs of the various options.

(b) Under the JPEN (Criminal Justice) financial programme, the Commission is funding a research project being carried out by the German Federal Ministry of Justice and Maastricht University ("EU-Wide Letter of Rights in criminal proceedings: towards best practice") reviewing how suspects are informed about their rights in criminal proceedings in the 27 Member States, and considering the feasibility of a model 'Letter of Rights' to be applicable throughout the EU[9]. The research team submitted an interim report in September 2009 detailing existing Letters of Rights in Member States that use them.

(c) In 2009, researchers from Maastricht and Ghent Universities carried out a comprehensive review of procedural rights in the EU[10] for the Commission. The study identified current practice for transmitting information to suspects and accused persons in all Member States.

(d) "Effective Criminal Defence Rights in Europe", a study funded under the JPEN Programme, is a joint initiative of JUSTICE, the University of the West of England, the Open Society Justice Initiative and Maastricht University. It is being carried out over a 3 year period (2007-2010) and provides empirical information on the extent to which procedural rights that are indispensable for an effective defence, such as the right to information, are provided in practice in 8 EU Member States and one accession country (Turkey). Interim results from the study were used as part of this impact assessment[11].

(e) The "Analysis of the future of mutual recognition in criminal matters in the European Union",[12] carried out by the ULB involved national experts carrying out research in their home Member State through in-depth interviews and questionnaires with practitioners, civil servants of ministries of justice responsible for negotiation and transposition of mutual recognition instruments, judges, defence lawyers, liaison magistrates and prosecutors. The report found that defence rights had been neglected in the development of mutual recognition. Levels of trust between Member States were not sufficient and the EU was encouraged to do more to redress the balance between facilitating prosecution and protecting the rights of suspects and accused persons.

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7 The Justice Forum, an expert group convening European representatives of all actors in the justice systems, including judges, prosecutors and defence lawyers, was constituted with the aim of providing an arena in which the Commission could consult its stakeholders. It meets 4-5 times a year for a themed discussion.

8 "Analysis of the future of mutual recognition in criminal matters in the European Union" by Gisèle Vernimmen-Van Tiggelen and Laura Surano (Call for tenders JLS/D3/2007/03 European Commission) – 20 November 2008

9 JLS/2008/JPEN/032

10 EU procedural rights in criminal proceedings – Taru Spronken, Gert Vermeulen, Dorris de Vocht, Laurens Van Puyenbroeck – JLS/2008/D3/002.

11 The research project covers nine countries: Poland, Hungary, Belgium, France, Italy, Germany, England and Wales and Finland and an accession state (Turkey).

12 "Analysis of the future of mutual recognition in criminal matters in the European Union" by Gisèle Vernimmen-Van Tiggelen and Laura Surano (Call for tenders JLS/D3/2007/03 European Commission) – 20 November 2008

Additional sources of information used in preparing this Impact Assessment include:

- The book "Suspects in Europe: Procedural Rights at the Investigative Stage of the Criminal Process in the European Union"[13]. It contains a detailed account of procedural rights in 11 Member States and served as a basis, together with the studies, for comparing Member States' current practice,
- Annual reports of the ECtHR 2003-2009,
- European Court of Human Rights, "50 Years of Activity - some facts and figures" and Survey of activities 2007",
- Council of Europe annual penal statistics, 2007,
- Study on the Transparency of Costs of Civil Judicial Proceedings in the European Union, contract JLS/2006/C4/007-30-CE-0097604/00-36,
- International comparison of publicly funded legal services and justice systems, Ministry of Justice, United Kingdom, October 2009,
- Explaining attitudes towards the justice system in the UK and Europe, Ministry of Justice, United Kingdom, June 2008.

2.2.3. Internal consultation and scrutiny of the Impact Assessment

An Interservice Impact Assessment Steering Group was created involving representatives from DGT, DG SCIC, DG COMP, DG MARKT, DG RELEX, DG ELARG, OLAF, the Legal Service and the Secretariat-General. An IASG meeting was held on 15 March 2010 At the meeting and in subsequent communication with individual DGs, comprehensive feedback was received which has been taken into account throughout this report (Annex VI).

In her hearing before the European Parliament in January 2010, Vice-President Reding emphasised EU action in the area of rights for the accused as among her priorities for her term of office.

This Impact Assessment was examined by the European Commission's Impact Assessment Board on 5 May 2010. Further to the IAB's recommendations, additional information, explanations and data was provided. At the Board's request, the context of the initiative for this proposal ("Measure B") as integral part of the measures laid down in the Procedural Rights Roadmap is explained in greater detail in part 2. The fact that the initiative is not only meant to contribute to an improvement of judicial cooperation but also aimed both at the strengthening of fundamental rights of individuals at EU level and promotion of free movement of EU citizens has now been more clearly emphasised; the general and specific objectives of this initiative as set out in part 4 have been refined and amended in line with the Board's suggestions. The Board asked for a better explanation of the link between insufficient or inadequate provision of information to suspects and accused persons and practical problems in judicial cooperation between Member States: while no further statistical information could be added, the explanation of the connection between the specific problem of insufficient information and the general problem of delays and other complications in judicial cooperation proceedings in part 3 was extended and an up-to-date example illustrating the link added. Equally, in part 7 a more rigorous analysis of the proportionality of both elements of the preferred option was included and, in part 3, the explanation of the need for action at EU level (subsidiarity) elaborated. Furthermore, the report now provides a more detailed explanation of the costs ranges set out in parts 5 and 7 using exemplary indications of costs ranges for selected Member States to illustrate the effect of relatively wide ranges in the size of different cost factors across the EU. Following the Board's recommendation, greater use is made of references to the annexes throughout the main body of the report. Further, more technical changes have been made throughout the report and its annexes pursuant to the Board's recommendations.

[13] Ed Cape, Jacqueline Hodgson, and Ties Prakken (Intersentia May 2007)

2.3. Compliance with standards of consultation

General principles and minimum standards for consultation of interested parties have been followed in relation to this initiative. The views of all major stakeholders and Member States were sought. The Justice Forum November 2009 session covered the right to information.

3. PROBLEM DEFINITION

Summary of the problem:

There is insufficient trust between judges and prosecutors of different Member States. Divergences in practice and a number of high profile cases have damaged the perception of justice in certain Member States. In practice this means that judges may hesitate to agree to judicial cooperation requests from other Member States. The situation will become exacerbated as more mutual recognition instruments become applicable in Member States, following on from the European Arrest Warrant. The effective application of mutual recognition requires mutual trust. The ECHR is not enough to redress the situation for various reasons set out in this Impact Assessment. One aspect of the problem is a failure on the part of Member States' authorities to give adequate information to suspects and accused persons, and in particular information about what rights they have and what they are accused of. This information should be given to suspects and accused persons to ensure that they have a fair trial. The ECHR does not require this explicitly, but Commission research shows that it would make a considerable difference if information was given to all suspects and accused person throughout the EU in a similar way. It would lead to greater trust between judges if they knew that other Member States observed the same practices as they did, but not only between judges since the impact would be felt by all citizens.

3.1. The general problem: insufficient mutual trust between Member States

Insufficient levels of mutual trust between Member States' judicial authorities affect the cooperation in criminal matters between them. Since the 1999 adoption of the Tampere Conclusions, Member States have agreed that mutual recognition should be the cornerstone of judicial cooperation, that is, that judicial decisions taken in one Member State should be considered as equivalent to each other wherever that decision is taken, and so enforceable anywhere in the EU. If a judicial authority (usually a court or judge) in a Member State is to be expected to enforce or execute a foreign judicial decision (e.g. a custodial sentence or an arrest warrant) with the same effects as its own, that authority has to trust that the fundamental rights of the person concerned have been, or will be, respected in that other EU Member State. If that authority has any doubts about the consistent and comprehensive compliance with fair trial rights in criminal proceedings in one or more other Member States, judges and prosecutors may be unwilling to allow the surrender of someone or the sending of evidence for use in a trial in another Member State.

The perception that the rights of suspects and accused persons are not respected in every instance has a disproportionately detrimental effect on mutual trust and, in turn, on judicial cooperation.[14]
Evidence[15] and consultation[16] point to this and judges and prosecutors throughout the EU have argued this must be addressed. They stress that the difficulties in the application of EU cooperation measures can be felt in day to day practice but are not always translated into a higher number of refusals to surrender persons requested under European Arrest Warrants.

14 ULB study: lack of trust: para 18
15 ULB study, para 18. This assessment is supported by testimony of European Judicial Network members.
16 Justice Forum July 2008.

3.2 Rebalancing EU justice policy through further strengthening of fundamental rights

Whilst various important measures have been taken at European Union level to guarantee a high level of safety for citizens (most notably the Framework Decisions on the European Arrest Warrant and the European Evidence Warrant), no measures were taken to ensure that individuals suspected or accused of having committed a criminal offence could benefit from a high level of fair trial standards in criminal proceedings wherever these proceedings take place in the EU.

The need to improve the balance between measures facilitating prosecutions and enforcement of sentences and those protecting fundamental procedural rights of the individual had been identified by the Commission as early as 2003, calling for specific action on procedural rights. However, discussions on procedural rights within the EU had, for many years, not led to any concrete results. This has changed with the adoption of the Procedural Rights Roadmap by the Council of the European Union in November 2009 in which Member States resolved to take step-by-step action strengthening procedural rights of suspects and accused persons throughout the EU. Member States and stakeholders alike agree that it is necessary to enhance citizens' confidence that the European Union and its Member States will protect and guarantee their rights.

The Roadmap points the way for EU action and gives the Commission a mandate to act on a series of measures, which, taken together, will create a high standard of fundamental rights going well beyond the protection currently offered by Arts 5 and 6 ECHR. Taking this course will also give a specific EU meaning to the fair trial safeguards enshrined in Arts 47 and 48 CFREU.

3.3 Promoting free movement of EU citizens

Insufficient trust in Member States' legal systems and the inadequate protection of fundamental fair trial rights may deter EU citizens from exercising their right to move and reside freely within the territory of other Member States guaranteed by Art. 21(2) TFEU[17]. Removing obstacles to free movement of EU citizens is an essential aspect of ensuring that the internal market operates effectively for EU citizens. Provisions of the EU Treaties relating to free movement are intended to facilitate the pursuit by EU citizens of activities of all kinds throughout the EU, and preclude measures which might place them at a disadvantage should they wish to pursue an activity in the territory of another Member State.[18]

Approximation of fair trial standards across the EU by implementation of the Procedural Rights Roadmap will address the issue of lacking trust of citizens in the fair operation of another Member State's criminal justice system and thus contribute towards removing obstacles to free movement of citizens – be they real or perceived.

3.4 The specific problem: insufficient information in criminal proceedings and its consequences

Access to information for suspects and accused persons is a key factor in ensuring fair proceedings. Suspects and accused persons cannot be presumed to have a detailed-enough knowledge of their rights at the moment of arrest or police interview to enable them to make effective use of these rights, such as the right to legal advice (which may even be free, depending on the circumstances). Even where suspects and accused persons do have a general knowledge of their basic procedural entitlements, they might find themselves in situations in which special rights and protections going beyond the rights available in 'standard' situations might be applicable. It is therefore crucial that they should be informed of their rights in every case to ensure that they are indeed aware of the rights of which they could avail themselves. In this sense, provision of information on rights is the gateway to accessing all rights. To prepare their defence adequately, accused persons also needs to know in detail **the case against him** and what evidence there is. He also needs this information to

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[17] See also Directive 2004/38/EC of the European Parliament and of the Council of 29 April 2004 on the right of citizens of the Union and their family members to move and reside freely within the territory of the Member States (OJ L 158, 30.4.2004, p. 77).

[18] See, *inter alia*, judgment of the Court in case 143/87 *Stanton v INASTI*, para 13

challenge pre-trial decisions (such as a decision refusing him bail) where necessary. Where that information is not given, the fairness of proceedings is jeopardised.

Suspects and accused persons do not always receive all this information. This applies both to nationals and non-nationals involved in criminal proceedings. The situation is worse for non-nationals who may not be as familiar with the legal system as nationals and may have the added dimension of not speaking the language of the proceedings.

Member States have different systems for transmitting information on rights and on the case, and some information is not transmitted at all in some Member States. Discrepancies between Member States' practice relating to the provision of information are borne out by the most recent academic studies on the subject. The study *EU Procedural Rights in Criminal Proceedings*[19] found that there was substantial divergence between Member States in the way suspects are informed about their rights and the case against them. It found, for instance, that in four Member States there was no legal obligation **to inform a suspect of the right** to legal assistance and that only in ten Member States a suspect is informed about his rights by means of a written notification (Letter of Rights).[20] Even amongst those ten Member States, the study noted a great variance in terms of the rights included in the Letter (e.g. some Letters of Rights did not mention the right to translation and interpretation).[21] As far as this divergence in practice is concerned, the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT) has stressed that it is essential to provide a suspect who is arrested or detained with information about his rights, and that this information should generally be given in writing. In its report to the German Government on its visit to Germany in 2005[22] it urgently called for "*the provision of clear oral information* [to all persons detained by the police] *at the very outset, to be supplemented at the earliest opportunity (that is, immediately upon first entry into police premises) by provision of a written form setting out their* [suspects'] *rights in a straightforward manner. This form should be available in an appropriate range of languages. Further, the persons should be asked to sign a statement attesting that they have been informed of their right.*[23]" Provision of clear and comprehensible information about an arrested suspect's rights at the very outset of detention will give the individual concerned the possibility of making use of those rights (such as the right to legal advice) and thus help prevent intimidation and ill-treatment by police staff in the crucial period immediately following arrest.[24]In relation to information about the case, law and practice also vary considerably from one Member State to another[25]. In some cases, a written summary is given whilst in others, the accused person's lawyer is granted access to the case file and may take copies of the parts he deems relevant. In three Member States no access to the case file is given[26] and even in those Member States that provide for access of accused persons to the case-file, the point in criminal proceedings at which this access is granted varies significantly.

3.4.1 Adverse effects on criminal proceedings

Where suspects and accused persons are not adequately informed of the rights they enjoy in criminal proceedings or of the case against them, this can render these proceedings unfair:[27] a suspect might not be

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19 EU procedural rights in criminal proceedings – Taru Spronken, Gert Vermeulen, Dorris de Vocht, Laurens Van Puyenbroeck – JLS/2008/D3/002, p.15.

20 *Ibid*, p16. NB A Letter of Rights, which is a standard written notification of rights, drafted in simple language so that it is easily understood, was introduced in Germany with effect from 1 January 2010. It is not covered by this study but the IA henceforth refers to11 Member States operating a Letter of Rights system.

21 *Ibid*, p16 – supported by findings of Maastricht University study 21 September 2009.

22 CPT Report Germany, CPT (2006) 36, adopted on 7 July 2006 as published by the Government of the Federal Republic of Germany on http://www.bmj.bund.de/files/-/2044/CPT%20Report%202006.pdf

23 *Ibid*, para30. With reference to the CPT report Germany has since introduced a letter of rights in federal legislation.

24 CPT, *The CPT standards – "Substantive" sections of the CPT's General Reports*, CPT/Inf/E (2002) 1 – Rev. 2009, p11; CPT Report Germany, CPT (2006) 36, adopted on 7 July 2006 as published by the Government of the Federal Republic of Germany on http://www.bmj.bund.de/files/-/2044/CPT%20Report%202006.pdf.

25 EU procedural rights in criminal proceedings

26 ES, FR and EE. EU Procedural Rights in Criminal Proceedings. p94.

27 See for example the following ECtHR cases: *Padalov v Bulgaria* (judgment of 10 August 2006, application n° 54784/00), para 54; *Talat Tunc v. Turkey* (judgment of 27 March 2007, application n°32432/96); *Salduz v. Turkey*

aware that he can seek independent legal advice from a lawyer before police questioning and may thus be prone to make statements under the psychological pressure of detention which might be unduly incriminating and could be relied on at trial by the prosecution. A suspect who is convicted on the basis of his initial statement may appeal against his conviction and succeed in having the conviction overturned by an appellate court; the costs of the initial trial would thus be wasted. Similarly, where a suspect is held in pre-trial detention on the order of a court but cannot inspect the case-file that the police or prosecution presented to the court to obtain the order, he may not know the basis of the evidence on which the court relied when ordering the detention. The accused might appeal against the order although he might have chosen not to do so had he known on what compelling evidence the court relied on. Appeals and aborted proceedings such as this result in unnecessary costs for the Member State in which these criminal proceedings take place: court costs, costs of keeping a suspect in pre-trial detention,[28] and, where applicable, costs to the Member State's legal aid budget. Eventually, suspects or accused persons might lodge applications with the ECtHR based on lack of information in the initial stages of criminal proceedings, with the respondent Member State having to pay the applicant costs of domestic and ECtHR proceedings if the application is successful. Such costs in applications relating to lack of information about rights or the case can vary significantly; in *Padalov v Bulgaria* costs reached 1,700 €,[29] whilst in *Mooren v Germany* they reached 5,600 €.[30] Were sufficient information provided to suspects and accused persons in all instance, Member States would be likely to achieve costs savings resulting from court budget savings on account of fewer appeals etc. However, owing to lack of relevant statistical data the magnitude of such savings cannot be predicted with any precision.

3.4.2 Adverse effects on judicial cooperation between Member States

Inadequate provision of information on rights or on the charges against an accused person may not only lead to problems and associated costs in the Member State where the original criminal proceedings take place, but also in other Member States where a court in the Member State in which the proceedings take place wishes to seek cooperation from other Member State(s) in order to advance the criminal proceedings or enforce a financial or custodial sentence. Several EU instruments have been adopted over the course of the last decade to improve such cooperation, most notably the Framework Decisions on the European Arrest Warrant (EAW - in operation since 1 January 2004), the European Evidence Warrant and the transfer of sentenced persons between Member States.

All instruments aiming to facilitate judicial cooperation between Member States rely on the principle of mutual recognition: a decision of a court in one Member State (the issuing state), such as an arrest warrant or a final judgment imposing a prison sentence, shall be recognised and enforced by the courts of another Member State (the executing state) and treated as equivalent to their own decisions, i.e. without any further review of the decision or any lengthy recognition proceedings. Such quasi-automatic mutual recognition presupposes mutual trust between judges and courts throughout the EU in the fairness of criminal proceedings and the lawfulness of the decisions to be enforced. This trust depends on adherence to sufficiently high fair trial standards and the availability of effective defence rights across the EU. Where this trust is found to be wanting, mutual recognition will not work; courts in one Member State asked to execute an arrest warrant issued by a judge in another Member State would want to satisfy themselves in every case that the proceedings on which an arrest warrant was based or for which arrest and surrender of a person was sought, were, or were likely to be, fair and compliant with ECHR fair trial standards. Protracted proceedings would be the consequence where the sought person resisted surrender to another Member State and appealed against a decision recognising another Member State's arrest warrant. Mutual recognition of the foreign decision may even be refused where significant doubts as to the fairness of proceedings in another Member

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(judgment of 27 November 2008, application no. 36391/02); *Panovits v Cyprus* (judgment of 11 December 2008, application no. 4268/04); *Kamasinski v Austria* (judgment of 19 December 1989 A Series N° 168), *Ocalan v Turkey* (judgment of 12 May 2005); *Moiseyev v Russia* (9 October 2008); *Mooren v Germany* (judgment of 9 July 2009, application no. 11356/03).

[28] These costs vary significantly by Member State: in England and Wales, the costs of one day in prison average 130 € per day; in Germany they range around 70 € per day.

[29] *Padalov v Bulgaria* (judgment of 10 August 2006, application n° 54784/00).

[30] *Mooren v Germany* (judgment of 9 July 2009, application no. 11356/03).

State remain. Thus Member State courts have already refused to execute EAWs on account of a probable violation of the sought person's fair trial rights upon surrender to the issuing Member State.[31]

But even where another Member State's court decision is eventually enforced by the courts in the executing Member State, the swift operation of judicial cooperation instruments can be hampered significantly. This is the case where the person sought on the basis of an EAW appeals against a decision to recognise and execute the EAW and, eventually, brings an application against the Member State wishing to surrender him before ECtHR, citing a likely infringement of his fair trial rights in the Member State seeking his surrender. In this respect, some Member States have indicated that significant delays (of more than a year[32]) have occurred in EAW proceedings where an appeal against a decision to order (or to refuse) surrender of the sought person had been lodged. Thus insufficient mutual trust between judicial authorities detrimentally affects the efficient operation of the EAW within the timelines provided in the EAW Framework Decision. Such delay translates into an increase in court costs, costs for holding a sought person in extradition detention and legal aid fees.

In this context it is crucial to emphasise that it may take only one high-profile case in which a suspect's or accused person's fair trials rights have been breached to erode the trust of judges in one Member State in the fair operation of another Member State's criminal justice and thus significantly hamper judicial cooperation between the respective Member States. This risk is expected to be magnified when those mutual recognition measures adopted at EU level since the EAW Framework Decision[33] have been implemented and when Member States seek to enforce freezing orders, financial penalties or the transfer of convicted persons serving a custodial sentence to another Member State.

Allegations of insufficient information on rights or charges being provided to suspects or accused persons, and an associated potential violation of the right to a fair trial as enshrined in the ECHR, have already adversely affected judicial cooperation between Member States. Whilst there is very little detailed statistical data available on the causes for delay in judicial cooperation proceedings, a most recent case provides ample illustration of the consequences such allegations of inadequate information on the charge against a suspect can have on intra-EU judicial cooperation. In this case,[34] execution of a Portuguese EAW by UK courts for execution of a two-year prison sentence took more than 14 months and involved five decisions by UK courts and a decision by the ECtHR against the sought person who argued that his accelerated trial in Portugal had been unfair owing to failure on the part of the Portuguese authorities to inform him about the charge. Had the alleged unfairness of the Portuguese proceedings, said to have been caused, to a significant extent, by lack of information on the charge against the accused, not been the central issue of the proceedings in the UK, it is assumed that surrender would have been effected significantly more swiftly than was the case. Owing to limited data available on the factors influencing the lengths of judicial cooperation proceedings in executing Member States, it is impossible to quantify with precision the financial consequences of inadequate provision of information to suspected and accused persons on judicial cooperation proceedings in the executing state in terms of courts budget impact and legal aid costs.

Insufficient information is a common feature of cases that are known to have attracted media attention. These cases, although the exception rather than the rule, are likely to have adverse effects on the reputation of a Member State's criminal justice system as it only takes one high profile case to erode trust and thus jeopardise judicial cooperation. The NGO Fair Trials International (FTI) has reported that out of 30 cases in which it was involved, in only two cases was the suspect or accused person informed of their rights. The following case studies were presented by FTI and serve as examples:

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31 E.g. Case AU7667, *Rechtbank Amsterdam* (judgment of 4 January 2006); *Lisowski v Regional Court of Bialystok* [2006] EWHC 3227 (Admin), High Court of England and Wales (judgment of 28 November 2006). Generally, it has to be noted, though, that the average refusal rate thoughout the EU currently stands at 4 to 8 %.

32 Council Doc 10330/3/08 (Replies to questionnaire on quantitative information on the practical operation of the European Arrest Warrant – Year 2007), p11.

33 Such as the Framework Decisions on Financial Penalties, Confiscation, Freezing Orders, European Evidence Warrant, Transfer of Prisoners and European Supervision Order.

34 See *R (on the application of Gary Mann) v City of Westminster Magistrates' Court* [2010] EWHC 48 (Admin) (judgment of 19 January 2010).

Case examples on information on rights and charges in criminal proceedings:

The T-Brothers

FT and AT, nationals of Member State A, were arrested in Member State B on drugs charges. The brothers were interrogated without lawyers, forced to sign confessions in the language of B which they did not understand, and were not shown the charges against them for over a year. The brothers were unaware of their right to legal assistance and an interpreter. They were convicted to six years' imprisonment.

GM

GM national of Member State A, attended a major football tournament in Member State B. Following street disturbances he and 13 others were arrested. They were tried and convicted under "emergency" powers, less than 48 hours after the arrests. GM has maintained that he was elsewhere with friends during the disturbances, but he had no chance to call them as alibi witnesses. Unbeknown to him, the emergency legislation provided for a 1 month stay of proceedings to prepare a defence, in cases where, for example, identification was in issue – as here. GM was not informed of this crucial right until long after the trial. Together with 13 other defendants he was given only brief access to a court-appointed lawyer on the day of his trial, who did not tell him about the possibility to seek a stay of proceedings. He also shared an interpreter at trial (none was given before) with the other 13 defendants. GM also did not know on arrest what the allegations were against him or what offence he was charged with. It was only when he happened to peer over the shoulder of the interpreter, 20 minutes before the end of the trial itself, that he saw the words "leading a riot" in his native language and realised that this was what he had been charged with. GM claims that as a result of these failings to provide him with timely information about his rights, or to allow time for those rights to be properly exercised, his trial was unfair. It is likely that this situation could have been prevented had GM been advised in a timely way of his rights.

T

T, a national of Member State C, was charged with a drug offence in Member State A. Travelling back to Member State A from a holiday in Country B with an acquaintance who was found with cocaine in his bags on arrival at the airport, T was searched but was found to have no drugs in her own bags. T understood very little about the case. T says she did not know at the trial that she was testifying as a co-accused. She thought she was a witness for the prosecution against her acquaintance. At the trial itself, T did not know that she was entitled to request the assistance of a translator or interpreter. Following her conviction, T spent four years in jail before being pardoned by Member State A.

These cases illustrate that the provision of information on rights and the charges in a way that ensures that suspects or accused persons become fully aware of their rights and the accusations against them is crucial to safeguard the fairness of criminal proceedings. Currently, only some Member States inform suspects and accused persons both of their rights and of the case against them in a manner that makes it likely that the person is adequately made aware of his rights and receives sufficiently detailed information on the charge to prepare and effective defence or, where necessary, challenge pre-trial decisions. It will have to be ensured that across the EU suspects and accused persons are provided with such readily comprehensible and comprehensive information on their rights and the case and that a reliable mechanism is in place to allow *ex post* verification of the provision of information.

Only where judges throughout the EU can have the confidence that all Member States provide suspects and accused persons with sufficient information about their rights and the charges in a verifiable and comprehensible fashion, will these judges be inclined to order the execution or enforcement of a judicial decision taken in criminal proceedings in another Member State.

3.5 Existing legal standards do not offer adequate protection to suspects and accused persons

Currently, there is a considerable discrepancy between Member States' laws and practice in relation to providing suspects and accused persons with information on their rights and the case against them and there are no sufficiently high and adequately enforced standards governing the provision of information to suspects and accused persons that apply uniformly to all Member States.

There is no legislation at EU level laying down procedural rights and guarantees for suspects and accused persons to complement the increasing numbers of EU measures providing for mutual recognition of judicial decisions in criminal proceedings. The Charter of Fundamental Rights (CFREU) in its Arts 47 and 48 sets out rights that are similar to, although less specific than, those of the ECHR and has become legally binding for Member States with the entry into force of the Lisbon Treaty. Arts 47 and 48 lay down the rights to an effective remedy and to a fair trial, the presumption of innocence and the rights of the defence. Art 6 contains safeguards in case of arrest and detention and has the same meaning and scope as Article 5 of the ECHR.[35] Member States are bound by the provisions of the Charter when acting within the scope of Union law; within their respective powers, EU institutions as well as Member States must respect these rights and promote their application (Art 51).

However, minimum rights and fair trial standards for all member states of the Council of Europe are laid down in the ECHR. Stakeholders argue that the ECHR and its enforcement mechanism do not, in all cases, offer sufficient protection for the suspects and accused persons in general and guarantee the provision of adequate information on rights and charges in particular. This is due to two factors:

a) Rights to information contained in the ECHR do not go far enough

Arts 5 and 6 of the ECHR lay down minimum procedural rights and standards for ensuring that criminal proceedings are fair. Art 6(3) ECHR sets out a catalogue of rights in criminal proceedings but does not contain an *express* right to information on rights. While the ECtHR has, in its case-law, stressed the need to inform a suspect of his rights in order to enable him to exercise them effectively,[36] there is to date no specific case-law on the issue of *how* suspects must be informed about their defence rights. Pursuant to Arts 5(2) and 6(3)(a) ECHR a person arrested or charged with a criminal offence has the right to be informed *promptly* of the reasons for his arrest or the *nature and cause of the accusation against him in a language which he understands.* The level of detail of the information to be given depends on the circumstances of the individual case and the ECtHR has refrained from laying down hard and fast rules. However, when interpreting the right to have adequate time and facilities for the preparation of his defence pursuant to Art 6(3)(b) ECHR, the ECtHR has repeatedly decided that the accused or his defence lawyer has to be given access to the case-file in order to prepare the defence adequately and provide equality of arms between defendants and prosecutors.[37] Yet, as the study by Ghent and Maastricht Universities found, there is still no right for suspects or defendants (or their lawyers) to have access to the case-file in four Member States.[38]

b) Shortcomings in the procedure for obtaining redress

Someone whose rights have been violated by a country signatory to the ECHR may, in theory, bring a case before the ECtHR once he has pursued all available avenues of appeal in the state concerned. Thus, the system of protection granted by the ECtHR is *ex-post* only. Ensuring justice in individual cases *ex-post* serves a different purpose from laying down generally applicable rules *ex-ante*. Moreover, the enforcement

35 Explanation on Article 6 of the Explanations relating to the Charter of Fundamental Rights, Official Journal, 14.12.2007, C 303, page 19.

36 *Padalov v Bulgaria* (judgment of 10 August 2006 , application n° 54784/00).para 54; *Talat Tunc v. Turkey* (judgment of 27 March 2007, application n°32432/96); *Salduz v. Turkey (*judgment of 27 November 2008, application no. i36391/02); *Panovits v. Cyprus* (judgment of 11 December 2008, application no. 4268/04).

37 *Kamasinski v Austria* (judgment of 19 December 1989 A Series N° 168), *Ocalan v Turkey* (judgment of 12 May 2005); *Moiseyev v Russia* (9 October 2008).

38 T Spronken/G Vermeulen et al, EU Procedural Rights in Criminal Proceedings, p94.

system of the ECHR suffers from a huge backlog of cases awaiting disposal at the ECtHR[39]. There are difficulties in bringing a case, e.g. the requirement to pursue domestic appeals and the application to the ECtHR can be too expensive for some applicants in the absence of legal aid. Finally, any remedy for the violation may come many years after. Therefore many people whose rights have been violated never bring an action at the ECtHR. Furthermore, as these rights may not be enforceable in certain Member States' legal traditions where the ECHR itself is not directly applicable, thus making recourse to the ECtHR the only possibility of obtaining a remedy for a violation.

In the light of these limitations to the current protection of the right to information currently afforded by the ECHR and its enforcement mechanism, it becomes apparent that any EU measure addressing the problem of ensuring that suspects and accused persons receive adequate information about their rights and the case against them across the EU should go *beyond* the current ECHR standard and create stronger rights to information, stating expressly by what means and at which moment in criminal proceedings information has to be provided to a suspect or accused person. Information on rights at least for those suspects who are deprived of their liberty should generally be provided in writing in line with CPT recommendations. It is also crucial that not only should the substance of the right to information be strengthened, but also that it should be ensured that such higher EU standards are enforced effectively.

3.6 The scope of the problem

Member States currently do not collect data on the number of proceedings in which insufficient information is complained about or has led to judicial decisions being appealed and upheld or reversed by a higher court. Whilst the number of cases in which the ECtHR found a signatory state in breach of rights under Art 6 ECHR have increased steadily over the last decade (from 234 in 2003 to 482 in 2009[40]), this is not necessarily indicative of an increase in the number of instances where criminal proceedings in Member States may have fallen short of the standards of Art. 6 ECHR, let alone of the number of cases in which a suspect or accused person may not have been informed adequately about his rights or the case against him. The number of cases reaching the ECtHR are contingent on a variety of factors which do not all relate in proportion to the actual number of cases where violations of fair trial rights may have occurred. Factors such as the availability of legal aid to bring a case to the ECtHR can skew the proportionate relationship between the number of cases brought before the ECtHR and the actual number of cases where violations of fair trial rights occur but are not brought to the ECtHR.

Qualitatively, however, the problem of suspects and accused persons not being provided with indispensable information on their rights or the case against them is ongoing and the ECtHR continues to find Member States to be breaching the rights enshrined in Arts. 5 and 6 ECHR where suspects or accused persons in certain situations are not being told of their right to receive legal advice or are not given access to the case-file so as to prepare their defence adequately or to challenge pre-trial decisions.[41] Stakeholders have confirmed the seriousness of the problem highlighted by these cases and the fact that across the EU these problems, whilst not endemic, can occur in most Member States.

3.7 The baseline scenario: how would the problem evolve all things being equal?

Mutual trust between Member States' judicial authorities is expected to remain at the current insufficient level as it is likely that instances of Member States' authorities failing to provide suspects or accused persons with information on their rights and/or the case against them will continue to occur and be reported. While there is a trend among Member States to adopt legislation requiring law enforcement authorities to provide suspects or accused persons with a written notification of their rights in a language they understand and to grant them or their lawyer access to the case file, there are no indications that this trend will lead to *all*

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39 120, 000 cases pending as at February 2010.

40 European Court of Human Rights, Annual Report from 2003 to 2009

41 E.g. in the cases of *Padalov v Bulgaria* (judgment of 10 August 2006 , application n° 54784/00); *Panovits v. Cyprus* (judgment of 11 December 2008, application no. 4268/04); *Mooren v Germany* (judgment of 9 July 2009, application no. 11364/03).

Member States introducing similar obligations. Without precise and binding obligations to inform suspects and accused persons of their rights and/or the case against them at EU level, no further disincentives against Member States failing to provide adequate information to suspects and accused persons would be created to ensure that those instances of failure to provide information would be prevented. The expected further increase in the caseload of the ECtHR would continue to limit the effectiveness of the ECHR in improving the provision of information to suspects and accused persons in criminal proceedings across the EU.

Increased movement of citizens between Member States[42] and activities of individuals or businesses in one Member State having an effect in other Member States will lead to a greater need for judicial cooperation in criminal proceedings between Member States (e.g. evidence to be gathered in other Member States, financial penalties to be enforced and more individuals surrendered on the basis of an European Arrest Warrant). Between 2006 and 2008 the number of EAWs issued by Member States rose from 6,750 to 13,600, the number of persons surrendered from 1,890 to 3,400.[43] This rise in the number of EAWs is likely to continue over the coming years and will make the problem of insufficient levels of mutual trust considerably more acute.

The need to improve mutual trust will become even more pressing with the implementation and application of the raft of EU judicial cooperation measures envisaging the mutual recognition of judicial decisions in criminal proceedings such as those concerning the gathering of evidence abroad or the transfer between Member States of convicted persons serving custodial sentences.[44] It is particularly this latter instrument the application of which will make promotion of mutual trust between Member States' judicial authorities by strengthening fair trial rights at EU level essential. These measures which were adopted at EU level over the last few years have been improving the effectiveness of prosecutions and enforcement of sentences across the EU. Yet there is a consensus among politicians, practitioners and other stakeholder that the absence of measures at EU level to promote the rights of citizens as suspects in criminal proceedings in another Member State has created a sense of imbalance in EU justice policies which the Council is now aiming to address in the Roadmap.

A proposal for 'Measure A' (draft Directive on the right to interpretation and translation in criminal proceedings) has been agreed by the European Parliament and the Council in June 2010 and will be formally adopted later in the year. This will address the issue of ensuring that suspects and accused persons not understanding the language in which criminal proceedings against them are conducted are provided with interpretation and translation of core documents in the proceedings. It will not require Member States to ensure that **all** suspects and accused persons – whether they understand the language of the proceedings or not – are suitably informed both of their rights in the proceedings **and** of the case against them. There is a limited overlap between Measure A and Measure B in the sense that Measure A will require Member States' authorities to provide suspects and accused who do not understand the language of the proceedings with a translated copy of core documents contained in the relevant case file. In this limited sense Measure A will already ensure that accused persons are provided with *some* information on the case against them.

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[42] Eurostat data confirm that the percentage of foreigners in the overall population in the EU increased from 3.5% in 2000 to 6.1% in 2007:
http://epp.eurostat.ec.europa.eu/portal/page?_pageid=1996,45323734&_dad=portal&_schema=PORTAL&screen=welcomeref&open=/t_popula/t_pop/t_demo_pop&language=en&product=REF_TB_population&root=REF_TB_population&scrollto=0

[43] 11371/4/07 (no data from BE, DE, IT and SE), 10330/3/08 (no data from BE, BG and IT); 9734/2/09 (no data from BE, BG, DK, IT, MT, NL, AT, PT and UK).

[44] Framework Decisions on the European Evidence Warrant, implementation deadline: 19 January 2011, and on the Transfer of Prisoners, implementation deadline 5 December 2011.

3.8 Does the EU have the power to act?

3.8.1 The legal basis

The EU's legislative competence for a Directive laying down minimum rights in criminal proceedings is set out in Art 82(2)(b) TFEU. Pursuant to this provision, minimum rules concerning the rights of individuals in criminal proceedings may be adopted by means of directives to the extent necessary to facilitate mutual recognition of judgments and judicial decisions and police and judicial cooperation in criminal matters having a cross-border dimension. The necessity for legislative action at EU level is demonstrated by the problems currently encountered in Member States' courts in judicial cooperation litigation.

Art 82(2)(b) TFEU provides the legal basis for legislation applicable not only to cross-border criminal proceedings (i.e. proceedings with a link to another MS or a third country) but also to domestic cases as a precise, *ex ante* categorisation of criminal proceedings as cross-border or domestic is impossible in relation to a significant number of cases. Links between domestic proceedings to another MS or third country can appear at any time throughout the various stages of criminal proceedings at which the application of specific provisions dealing with cross-border situations might not be possible anymore or certainly would make proceedings unpredictable and unmanageable. Thus, even after criminal proceedings have concluded with a final judgment imposing a sentence on the defendant by the courts of his Member State of nationality, such a case could still turn into a cross-border case necessitating judicial cooperation between Member States where the convicted person moves (or flees) to another Member State prior to having served his sentence in full. An EAW might thus have to be issued for achieving the return of that person (or the enforcement of a financial penalty be sought by the court which had imposed the penalty). Thus it is essential for the promotion of mutual trust to ensure that measures strengthening minimum fair trial rights apply to suspects and accused persons in *all* criminal proceedings throughout the EU and not just those proceedings which show a cross-border element at their outset. In addition, the CFREU guarantees rights to everyone suspected of being involved in cross border or purely national proceedings

3.8.2 Why the EU is better placed to take action than Member States?

The EU is establishing its own, unique system of judicial cooperation based on the principle of mutual recognition throughout the EU. Such a novel system calls for a guarantee of uniformly high standards of fundamental procedural rights protection in the EU. Considering that there is wide variation between Member States on the content, means and timing of information on rights and on the charge provided to suspects and accused persons, it is unlikely that Member States acting individually would be able to establish a sufficiently consistent standard of provision of information. Even recurring CPT reports issued to Member State governments calling on them to ensure that arrested suspects are informed of their rights by means of accessibly drafted written notification have only led to a minority of Member States adopting a system of notification by such means. Similarly, there are no indications that Member States would provide for raising and approximation of standards of informing accused persons of the charge against them. Whilst a majority of Member States already use largely identical means of informing accused persons of the charge, there is still significant variance in the precise way and timing of the provision of this information which leads to a divergence of standards in relation to this information across the EU. This illustrates that it will only be action taken at EU level that may allow setting a consistent and high standard of information given to suspects and accused persons throughout the EU.

The ECHR already sets European-wide fair trial standards (which, in relation to a number of rights, cannot always be considered sufficient in the scope of protection) but its enforcement mechanism cannot guarantee a sufficient and consistent level of compliance by its signatory states, including EU Member States. This is a further indication that the EU would be better placed to take action than individual Member States since if the EU takes legislative action, the full panoply of enforcement mechanisms (such as the duty to transpose a directive into legislation in the Member State; implementation monitoring by the Commission; the possibility of infringement proceedings before the ECJ against non-compliant Member States) would be available to make sure that there was compliance with the new right to information standards contained in EU legislation.

4. Objectives

Any measure(s) taken at EU level should achieve the following objectives, which have been developed on the basis of the general and specific problems identified in part 3:

Objectives:		
General:	To improve judicial cooperation in the EU by restoring mutual trust between Member States in the fair operation of the criminal justice systems To ensure a high level of protection of fundamental rights in criminal proceedings, thus fostering free movement of EU citizens throughout the EU	
Specific:	To facilitate execution and enforcement of judicial decisions in criminal matters across the EU by ensuring that suspected or accused persons in the EU receive sufficient **information <u>on their rights</u>**, preferably in writing, for them to exercise their defence rights effectively.	To facilitate execution and enforcement of judicial decisions in criminal matters across the EU by ensuring that accused persons in the EU receive sufficiently detailed **information <u>on the case against them</u>** in order to enable them to prepare their defence or challenge pre-trial decisions effectively.
Operational:	Information provided to suspects or accused persons on their fair trial rights should: • be in clear language which will be easily understood by the suspect or accused person • be provided at first contact with the police • include core rights under the ECHR and the CFREU which are applicable on arrest, first interrogation and during detention • be provided in such a way that it is possible to verify that the information has been transmitted	Information provided to suspects or accused persons on the charge or accusation should: • be sufficiently detailed to allow adequate preparation of the defence case or challenge of pre-trial decisions • be provided in a timely fashion and in such a way that the suspect or accused person understands the case against him • be provided in such a way that it is possible to verify that the information has been transmitted

Measure B forms part of a package of measures for improving mutual trust. Only once all the measures envisaged in the Roadmap are in place will it be possible to achieve the general objective. The following options are assessed against the specific and operational objectives above.

5. Policy options and their impact

The options for addressing the problem as defined in part 3 of this Impact Assessment, in line with the objectives as established in part 4, are set out below.

5.1 Discarded options

In relation to both non-legislative and legislative options, limiting the scope of the options or measures to criminal proceedings of a cross-border nature has been discarded as largely unworkable in practice for the reasons set out above (see para 3.8.1.).

5.2 Overview of policy options

- **Retention of the status quo:** This option would involve taking no action at EU level.
- **Other policy options:** Below, two sets of policy options are presented, one set, (A), covering information about a suspect's rights and one, (B), covering information about the case against the suspect or accused person.

A) Policy options that address the problem of suspects and accused persons not always receiving adequate information about rights:

Non-legislative action:

- **Policy option A1**: EU-wide information campaign on minimum defence rights
- **Policy option A2**: Council Recommendation on good practice on informing suspects and accused persons of their rights

EU legislative action:

- **Policy option A3**: Creation of an EU-wide duty to inform suspects and accused persons about their rights by means of Member States' choosing
- **Policy option A4**: EU-wide duty to inform arrested suspects about their rights by means of a Letter of Rights to be drafted by Member States, containing a common minimum set of rights (ECHR rights and EU law), with Member States to add further rights available under their own legislation
- **Policy option A5**: Creation of an EU-wide duty to inform arrested suspects and accused persons about their rights by means of a Letter of Rights including standard EU-wide formulations of minimum rights as annexed to the Directive
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B) Policy options that address the problem of suspects and accused persons not always receiving adequate information about the case against them promptly, in detail and in a language they understand:

Non-legislative action:

- **Policy option B1**: Council Recommendation on good practice and training on informing suspects and accused persons of the case against them

EU legislative action:

- **Policy option B2**: Creation of an EU-wide duty to inform suspects and accused persons about the case against them by means of Member States' choosing
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- **Policy option B3**: Creation of an EU-wide duty to inform suspects and accused persons of the case against them which includes granting them (or their lawyer) access to the case-file

5.2 Description and impact analysis of policy options

There are currently no data on the overall number of criminal proceedings in which suspects and defendants are or are not provided with adequate information for ensuring fairness of the proceedings. Options are therefore assessed on the basis of effectiveness in achieving the specific and operational objectives in largely qualitative terms using input from stakeholders, and in terms of potential cost savings and efficiency gains of criminal proceedings.

The specific issue of juvenile and other vulnerable suspects and accused persons receiving adequate information in relation to their circumstances will not be covered by the options presented for this measure but will be the subject of a separate measure ("Measure E" of the Procedural Rights Roadmap).

All policy options envisage equal treatment of EU and non-EU nationals; third-country nationals would receive the same protection as EU citizens in criminal proceedings throughout the EU.

5.2.1 Retention of the status quo

No action would be taken at EU level. By unanimously adopting the Roadmap[45] at the JHA Council meeting on 30 November 2009, Member States made it clear that they would not support retention of the status quo.

Expected Impact	
Effectiveness in meeting objectives	The situation is expected to evolve as set out in part 3.7 above. As the ECHR does not contain an express right of suspects to be informed of their fair trial rights, this option would not contribute to ensuring Member States' authorities adequately inform suspects about their rights. Whilst there is a trend amongst Member States to introduce requirements to provide suspects with a written notification of their procedural rights when they are first detained or questioned as suspects[46], there are no indications that all Member States will follow this trend. Similarly, even though Member States are already under a duty under Arts. 5(2) and 6(3)(a) ECHR to inform suspects and accused persons of the nature and cause of the charge against them, and, where necessary, should grant access to the case-file on the basis of Art. 6(3)(b) ECHR, Member States currently discharge their duty to inform about the charge by widely differing means. Information is often provided orally, on an *ad hoc* basis. Yet, in order adequately to prepare a defence or, where necessary, challenge pre-trial decisions, the suspect or accused person needs detailed information on the case, especially as regards the evidence against him. Some Member States do not currently provide for access to the case file[47] in their national law. Thus the retention of the status quo would not contribute to achieving the specific objectives set out in part 4.
Social impact and fundamental rights	There are no expected positive social impacts. On the contrary, failure to implement Measure B of the Roadmap would strengthen the impression of EU justice policy primarily being concerned with enhancing prosecutorial cooperation between Member States without sufficient regard to the effective protection of the rights of citizens as suspects or accused persons. This option could also foster the perception that the Charter of Fundamental Rights – and the fair trial guarantees enshrined therein – have no discernible impact on EU policy formulation.
Financial and economic impact	There are no immediate new financial burdens associated with this option. However, this option will not lead to a reduction in the costs to Member States' law enforcement

[45] See Annex I.

[46] Eleven Member States now operate Letter of Rights schemes: AT, CZ, DE, ES, IT, LV, LU, PL, SL, UK.

[47] EE, ES, FR; with effect of 1 January 2010 DE has introduced a right of suspects to grant their lawyers access to the case file. Were a suspect or accused person is not represented by a lawyer, he has a right to receive information from the case file, which may include the provision of photocopies of core documents.

	budget and to individual suspects or accused persons incurred by appeals, aborted prosecutions and protracted judicial cooperation litigation in Member States where suspects have not been provided with adequate information on their rights at a decisive stage of criminal proceedings.

5.2.2 Policy options A: Options for ensuring provision of adequate information about rights

Policy Option A1: EU-wide information campaign on minimum defence rights

Description: Launch an information campaign launched targeting defence lawyers, law enforcement frontline staff and suspects in police stations explaining the fair trial rights suspects and accused persons enjoy under the ECHR, EU directives implementing the Roadmap and Member States' law. Campaign to consist of production of leaflets and posters setting out these rights distributed to police stations and schools and through existing networks and EU agencies including the European Judicial Network, European Judicial Training Network and the European Police College, and defence lawyers and human rights organisations including as the CCBE, the European Criminal Bar Association and Member States' lawyers associations The European Commission would provide coordination for the campaign. However, in line with the voluntary nature of Member States' participation in the campaign, the Commission would not plan to carry out any formal monitoring activity, and Member States would not be expected to report to the Commission on implementation.

Expected Impact	
Effectiveness in meeting objectives	There would be no guarantee that leaflets and posters setting out the minimum rights would be available in an appropriate range of languages in police stations across the EU in sufficient numbers and actually be provided to suspects. Member States or individual authorities might refuse to participate in the campaign and could not be compelled to do so. Recent country visit reports by the Committee of the Prevention of Torture (CPT) indicate that only a duty of law enforcement frontline personnel to inform suspects and accused persons of fair trial rights *in writing* can be expected to ensure that adequate information on defence rights is routinely provided to suspects. On the basis of this experience, option A2 has to be considered as insufficiently efficient to achieve the objectives set out in part 4.
Social impact and fundamental rights	This option would raise awareness of the rights enshrined in Arts. 5 and 6 ECHR and the fair trial guarantees in Arts. 47 and 48 CFREU and could to lead to a reduction in cases where there is a complaint of violation of fair trial standards.
Financial and economic impact	Production costs to the EU would range between 100.000 € for a poster campaign to 2-5 million € for a leaflet campaign, which excludes the administrative costs of translating the material in a sufficiently high number of languages. The operational costs or administrative burden on Member States in ensuring that the campaign material is available would generally be low to medium (stakeholders have suggested a range of between 3 and 10 million € for all Member States). A comprehensive campaign would be needed to reduce appeals or aborted prosecutions where it is alleged that adequate information about fair trial rights was not provided.

Policy option A2: Council Recommendation on good practice in relation to informing suspects and accused persons of their rights

Description: A non-binding Council Recommendation for Member States to improve the provision of information on suspects' rights through provision of written notification of fair trial rights in a language the suspect understands, using standard templates. The Recommendation would identify current good practice in those Member States that already use Letters of Rights to inform suspects and accused persons. The

Recommendation would envisage the commissioning by the European Commission of a study on the effect of the Recommendation three years after its adoption. Given the non-binding nature of a Recommendation, it would not contain any reporting obligations on part of the Member States as concerns its implementation. Most non-government stakeholders did not consider non-legislative options on their own as capable of promoting achievement of the objectives identified in part 4.

Expected Impact	
Effectiveness in meeting objectives	It is not certain that the non-binding Recommendation would be implemented fully by all Member States, particularly those which do not have a Letter of Rights scheme already. Despite repeated and strongly-worded exhortations by the CPT to several Member States that the provision of written notification of procedural rights is essential, especially to those suspects or accused persons in detention, only 11 Member States have, so far, introduced obligations to provide such written notification. It is uncertain whether a Recommendation would be more effective than the current robust system of CPT visits and reports, at least where arrested or detained suspects are concerned.
Social impact and fundamental rights	This option is likely to reduce the number of violations of the right to a fair trial as guaranteed by the ECHR and the CFREU, but not significantly. Owing to its non-binding nature it is unlikely to promote a culture of EU-wide fundamental rights and the setting of an EU standard of fair trials. Moreover, the fact of choosing a mere non-binding measure to promote fair trial rights compliance across the EU as opposed to the binding and enforceable legislative instruments used for mutual recognition of judicial decisions (such as arrest warrants and freezing orders) could exacerbate the perception of significant imbalance between prosecutorial and defence rights-oriented measures.
Financial and economic impact	The financial or administrative burden resulting from this option depends on the level of Member States' implementation of all or some of the provisions contained in the Recommendation. *Full* implementation of the Recommendations is likely to have a similar financial and economic impact as option A4 (see there) with the exception that there would not be an impact on the caseload of the ECJ.

Policy Option A3: Creation of an EU-wide duty to inform suspects and accused persons about their rights by means of Member States' choosing

Description: A Directive creating a duty for Member States to ensure suspects and accused persons are informed of immediately relevant procedural rights arising from the ECHR and other EU legal instruments (the right of access to a lawyer, the right to be informed of the charge and, where appropriate, to be provided access to the case-file, the right to interpretation and translation for those who do not understand the language of the proceedings and the right to be brought promptly before a court if the suspected or accused person is arrested) in a language they understand. The Directive would *not prescribe the means* by which this information would be conveyed, so Member States may choose whether the information should be provided orally or in writing. The Directive would also stipulate that an adequate record would have to be kept of the actual provision of the information to the suspect to enable verification of that compliance.

Expected Impact	
Effectiveness in meeting objectives	This option would be more efficient in terms of achieving the specific objectives than the previous options on account of its legislative nature: it would create an express and unambiguous duty for Member States to ensure that suspects were informed of their fair trial rights which all Member States would have to implement. Thus, Member States would have to create an express right to information which would be enforceable in their courts. Courts may and sometimes must make preliminary references to the ECJ to seek clarification on the scope or application of the Directive.

	Furthermore, infringement proceedings under Art 258 TFEU could be brought where the Commission considered that a Member State had not implemented or applied the Directive adequately. However, the efficiency of this option is likely to be limited by leaving to Member States the decision on *how* to implement the Directive in terms of the *means* chosen to inform suspects about their rights. Member States could choose to require only oral notification to be given to suspects. Yet, the CPT has repeatedly highlighted the problems associated with purely oral notification of rights in its reports. Thus, option A3 could only achieve limited efficiency in relation to the specific and core operational objectives, especially since robust verification of the provision of information - even where contemporaneous recording of an oral notification were to be required under Member States' implementing legislation - would not be guaranteed. This limited efficiency applies *a fortiori* to the objective of adequately informing foreign suspects of their rights where notification would have to be in a language the foreign suspect understands.
Social impact and fundamental rights	This option would complement, but not go beyond, the protection afforded by Arts. 5 and 6 ECHR as interpreted by the ECtHR. The creation of such a gateway-right, key to enabling suspects to avail themselves in practical terms of their procedural rights, would not only ensure greater awareness of fair trial rights across the EU and make them more visible but would also contribute to fostering an EU culture of fundamental rights.
Financial and economic impact	The financial impact of this option on Member States will depend on the extent to which Member States would have to adjust their current practice to the requirements of the Directive, which, in turn, depends on the level of information on fair trial rights provided to suspects and accused persons at present. The impact on those Member States which currently use Letters of Rights to notify suspects and accused persons of their rights is expected to be minimal both as regards one-off costs adjusting current practice to the requirements of the Directive (mainly by including further rights in their respective Letters of Rights) and operational costs per year. Similarly,those Member States which currently inform suspects about (some of) their rights orally and will retain a system of purely oral notification of rights are likely to incur limited one-off costs for providing update on further rights oral notification of which may be necessary under the Directive. Significantly greater one-off costs are likely to be incurred by those Member States currently using exclusively oral notification of rights that will introduce an accompanying Letter of Rights to effect notification of rights. These costs and associated operational costs per year would be largely identical to the set-up and operational costs predicted for option A4 (see there). This option is likely to lead to a reduction in Member State expenditure for aborted prosecutions and appeals. The magnitude of these savings depends on the method Member States choose to comply with the directive: medium cost saving effects are likely to be yielded by those Member States among the 16 that do not *yet* have a system of written notification in place but would now be introducing mandatory written notification of rights. The level of these positive cost effects would be significantly lower where Member States decided to require only oral provision of information on fair trial rights. Equally, expected cost savings on the part of suspects owing to decreased recourse to appeals would depend on the way the Directive was implemented in each Member State.

Policy Option A4: **EU-wide duty to inform arrested suspects about their rights by means of a Letter of Rights to be drafted by Member States, containing a common minimum set of rights (ECHR rights and EU law), with Member States to add further rights available under their own legislation**

Description: A Directive creating a duty for Member States to ensure that suspects who are deprived of their liberty are informed of immediately relevant procedural rights arising from the ECHR and other EU legal instruments by means of a written notification (Letter of Rights) to be provided in a language they understand. Letter of Rights would have to be drafted to be comprehensible for a person with a low reading Member States may choose how to formulate the Letter of Rights as long as the minimum common rights stipulated in the Directive are adequately included in the wording. The Directive would stipulate that a copy of the Letter of Rights handed to the suspect would have to be signed by him or, where signature was refused, by an official of appropriate level confirming that a Letter of Rights had been given to the suspect. Suspected and arrested persons who are not under arrest will receive information on their procedural rights by means of Member States' choosing, i.e. orally or in writing.

This option has the support of a number of Member States and most non-governmental stakeholders.

Expected Impact	
Effectiveness in meeting objective	Stakeholder experience indicates that this legislative option will achieve the specific objectives to a greater extent than option A3 as it envisages notification of suspects of their fair trial rights in every case by means of a written Letter of Rights. Greater efficiency is also expected in terms of the potential for robust verification of the provision of information as required by the Directive. Equally, this option is likely to demonstrate efficiency in relation to achieving the general objective of improving judicial cooperation as it would allow judges called upon to order enforcement of a judicial decision issued in another Member State to see the Letter of Rights used in the criminal proceedings in the issuing Member State with a view to satisfying themselves that the individual concerned had been provided with sufficient information about his rights to afford him a fair trial.
Social impact and fundamental rights	This option would go beyond the protection offered by the fair trial guarantees enshrined in the ECHR as interpreted by the ECtHR in that it would require Member States in all criminal proceedings to notify suspects and accused persons under arrest of their rights *in writing*. The social impact of this option will go significantly beyond the impact of option A3 since written notification can be expected to reduce the risk, and perceived risk, of abuse of police power in relation to suspects detained by the police as emphasised by the CPT in its reports. Another fundamental rights aspect of having a written Letter of Rights in all Member States would be that they could be used not only in actual criminal proceedings but also as an educational tool for young persons in schools and other educational institutions.
Financial and economic impact	The main direct financial impact of this option is expected to be the **one-off set-up costs** incurred in the **drafting and translation of Letters of Rights** in Member States and in **informing and training law enforcement frontline personnel, prosecutors and judges**. The size of this impact will vary between Member States that use Letters of Rights that would already comply with the minimum content to be stipulated by the Directive, those that already use Letters of Rights that would only comply with some of the Directive's requirements and those which do not yet operate Letter of Rights schemes at all. Also, one-off costs will vary depending on the extent to which face to face training or simply an information update or circular is used to prepare law enforcement and judicial personnel on the change in law and practice required by the Directive. These non-recurring set-up costs are likely to range between 15,000 € and 2.5 million € per Member State, depending on the number of official to be trained and the level of remuneration of internal and external training personnel in individual Member States. Thus, for example set-up costs for Malta are likely to range between 5,200 and 30,000 € and for France between 650,000 and 2.4 million €. Owing to the

	relatively wide range of training costs factored into the model calculations for this option[48] and further statistical inaccuracies in the modelling it can be expected that the bottom half of the costs ranges indicated above will reflect more accurately the actual costs to be incurred in practice. On the basis of model calculations, *overall* operational costs per case of this option are estimated to range between 5,000 € and 4.6 million € per year per Member State depending on the number of criminal proceedings per year and levels of public sector remuneration. Thus, for example overall operational costs for Cyprus are likely to range between 5,000 and 30,000 € and for France between 1.9 million and 4.6 million €. The actual impact in terms of operational costs per case in relation to current operational costs per case will only be a fraction of this sum which, owing to lack of available statistical data collected by Member States, cannot be quantified with precision. In terms of indirect costs savings to Member States' law enforcement and courts budgets, this option is likely to yield better results than option A3 on account of improved means of verification of compliance with the duty to inform suspects adequately of their procedural rights[49]. For those Member State that have not introduced Letter of Rights schemes already, these savings can be expected to be the greatest owing to a greater potential reduction in the number of appeals and aborted proceedings.

Policy Option A5: Creation of an EU-wide duty to inform arrested suspects and accused persons about their rights by means of a Letter of Rights including standard EU-wide formulations of minimum rights as annexed to the Directive

Description: A Directive as in option A4 but stipulating an EU-wide standard formulation of immediately relevant procedural rights (the right of access to a lawyer, the right to be informed of the charge and, where appropriate, to be provided access to the case-file, the right to interpretation and translation for those who do not understand the language of the proceedings and the right to be brought promptly before a court if the suspected or accused person is arrested) to be included the Letter of Rights. Thus, suspects and accused persons deprived of their liberty on account of arrest and pre-trial-detention would be informed of the minimum rights they enjoy throughout the EU by means of a uniform formulation of these rights.

This option is favoured by a number of non-governmental organisations and legal academics and is currently also the subject of a research project under the auspices of the Ministries of Justice of Austria, Belgium, Germany, Hungary and Sweden.

Expected Impact	
Effectiveness in meeting objectives	Amongst all policy options A this option is predicted to yield greatest efficiency in terms of achieving the general and specific objectives. In relation to the general objective of promoting mutual trust between Member States this option is likely to be highly effective as prosecutors and judges across the EU would know that suspects received identical information about their common EU-wide minimum procedural rights wherever in the EU the proceedings were being conducted. Similarly, verification of the actual provision of accurate information on the minimum fair trial rights applicable throughout the EU in an easily understood form would be facilitated to the greatest possible extent by use of a uniform Letter of Rights. As the Directive would provide that Member States must only use a *single* Letter of Right to inform suspects and accused persons of their rights which would, where applicable, contain both the standard EU-wide formulation of minimum rights and

[48] See Annex V, A(1.).

[49] This was assumed by the German Government when changing the legislation governing access to the case file with effect from 1 January 2010: Explanatory memorandum to the Bill, BT-Drs 16/1164, p14.

	further national rights, the risk of confusing suspects by using more than one Letter of Rights to inform them of their rights (such as separate EU and national ones) would be averted.
Social impact and fundamental rights	Like option A4, this option would go beyond the current level of rights guaranteed in Arts 5 and 6 ECHR. To a greater extent than for options A3 and A4, the introduction of a standard EU-wide Letter of Rights containing information on core minimum procedural safeguards across the EU would promote an EU fundamental rights culture and the setting of an EU standard of fair trial rights. The remote risk of rights erosion which this option may pose where Member States' respective national laws provide for a more comprehensive set of procedural rights than those annexed to the Directive would be countered by the insertion of a non-regression clause in the Directive. It appears unlikely that Member States would actually water down procedural rights going beyond those currently enshrined in the ECHR simply because they would not be reflected in the EU-wide standard formulation of the notification of ECHR and EU rights set out in an Annex to the Directive.
Financial and economic impact[50]	Member States' one-off set-up costs of introducing Letters of Rights would be lower than those predicted for option A4 as they would incur reduced costs for drafting and translating their respective Letters of Rights: As the Commission would draft and translate the EU-wide standard formulation for minimum rights to be included in Member States' Letters of Rights in all 23 official Member State languages in the course of the preparation of the proposal for a Directive, Member States would not incur these costs. However, they would still incur the costs of translating the Letter of Rights into other languages than Member States' 23 official languages but could benefit from coordination among themselves for these translations. Thus, even the costs for translation the standard formulation of minimum rights in these other languages might only be incurred once per language where Member States cooperate on translation. Operational costs for Member States of this option are expected to be identical to those calculated for option A4 (see there and in part 7.2). The administrative costs to the Commission for drafting and translating the standard Letter of Rights in Member States' official languages in the course of the process of preparing a proposal for a Directive are likely to be equivalent of 50 hours' working time of a Commission official plus 200 hours working time for translation services for the initial translation into all Member State official languages**.** One-off training and per-case operational costs of this option incurred by Member States and indirect cost savings would be largely identical to those estimated for option A4.

5.2.3 Policy options B: Options for ensuring adequate information about the nature and cause of the charge or accusation promptly, in detail and in a language they understand

Policy option B1: Council Recommendation on good practice and training on informing suspects and accused persons of the case against them

Description: Council Recommendation setting out good practice relating to the provision of suspects and accused persons (or their lawyer) with information on the case against. Member States are urged to provide access to the case-file held by the police, prosecution or the court. Where granting access would prejudice the due course of the criminal proceedings, information on the case should be provided by other suitable means, preferably in written form. Member States would also be urged to provide further training to law

[50] See in detail part 7.2 and Annex V.

enforcement personnel, prosecutors and judges where necessary. The Recommendation would envisage the commissioning by the European Commission of a study on the effect of the Recommendation three years after its adoption. Taking into account of the non-binding nature of a Recommendation, the Recommendation would not contain any reporting obligations on part of the Member States as concerns implementation of the Recommendation.

Expected Impact	
Effectiveness in meeting objectives	Stakeholders regard access to the case-file as the best possible means of providing comprehensive information on the state of investigations or proceedings, particularly in terms of providing an exhaustive overview of the available evidence against the accused person. Yet, while those Member States which do not grant accused persons access to the case file *might* choose to introduce such a right on the basis of a Recommendation, this non-binding instrument would not *compel* Member States to provide for such a right. This would limit the efficiency of this option in relation to achieving the specific objective of ensuring that Member States provide sufficiently detailed information on the case against accused persons so as to enable them adequately to prepare their defence or challenge pre-trial decisions: Member States would be free to retain the status quo or only provide for giving accused persons less comprehensive information than they would receive were they afforded access to the case-file. Worse, this option would not prevent regression in standards by the high number of Member States that currently allow accused persons, or their lawyers, full access to the case-file.
Social impact and fundamental rights	This option presents the same potential for detrimental impact in terms of the perceived imbalance of EU justice policies described for options A2 and A3: whilst measures that assist the prosecution, such as the EAW and mutual recognition of financial penalties and freezing orders are contained in legislative instruments, there are no similar legislative measures at EU level to strengthen the rights of suspects and accused persons subject to these mutual recognition measures.
Financial and economic impact	The financial impact of this option on Member States would depend on the extent to which Member States implemented the Recommendation which, in turn, would be contingent on each Member State's current level of conformity with the core content of the Recommendation. Thus, as 23 Member States already state that they inform accused persons of the case against them by allowing them to inspect the case-file, the financial impact of implementation of the Recommendation would be low and might simply consist of the costs of providing law enforcement personnel and judges with an updating circular on the Recommendation. The financial impact for Member States that do not provide a right of access to the case-file will be identical to that expected for the preferred option B3 and is set out in detail in part 7.2. Indirect costs savings resulting from a reduction of the number of appeals and failed prosecutions in proceedings in which accused persons were not provided with adequate information on the charge or accusation against them are likely to be minimal.

Policy Option B2: Creation of an EU-wide duty to inform suspects and accused persons about the case against them by means of Member States' choosing

Description: A Directive creating a duty on Member States to ensure that suspects and accused persons are informed promptly and in detail of the nature and cause of the charge or accusation against them in a language they understand by means of Member States' choosing. The Directive would not prescribe the exact means by which the information had to be provided or whether the information should be provided orally, in writing or by other means.

Expected Impact	
Effectiveness in	This option would effectively consist of a transposition of the existing duty on

meeting objectives	Member States to inform arrested persons and those charged with a criminal offence of the nature and cause of the charge against them under Arts. 5(2) and 6(3)(a) ECHR into EU law. Whilst implementation of the Directive would make this existing right to information under the ECHR enforceable in Member States' courts and allow infringement proceedings to be brought in the ECJ against Member States failing to implement the Directive or misapplying it in practice, the Directive in this option would still leave the decision to Member States as to *how* to inform accused persons of their rights. Therefore, in terms of substantive content, this option would add little to the protection of suspects' right to information already enshrined in the ECHR with its shortcomings described in part 3. Thus it would not give accused persons an enforceable right to require Member States' authorities to provide them with information *going beyond* oral information or the information contained in written case summaries or pre-trial decisions as already provided under current obligations in most Member States. Member States would *not* be required to provide for the most comprehensive means of giving informing on the case by allowing access to the case-file. Therefore, this option is likely to yield only limited efficiency in terms of achieving the specific objectives set out in part 3; in particular, since this option would allow information on the case to be provided in a wide variety of ways (e.g. by the provision of an oral case summary, a formal indictment or *Anklageschrift* in writing or by granting the suspect or his lawyer access to the case-file at an early stage in a criminal investigation), this option is unlikely to facilitate meaningful verification of compliance.
Social impact and fundamental rights	By enshrining an express right to information at EU level, this option, while not going beyond the rights in Arts 5 and 6 ECHR, would contribute to fostering a culture of fundamental rights protection at EU level. However, as this right would not go beyond existing obligations under the ECHR, it would not set a specific and high EU standard of fair trial rights tailored to the requirements of the advanced judicial cooperation system in the EU.
Financial and economic impact	The financial impact of this option on Member States will depend on the extent to which Member States would have to adjust their current practice to the requirements of the Directive, which, in turn, depends on the level of information on the case provided to accused persons at present. The *impact* on those Member States which currently provide detailed oral or written information or provide information by granting accused persons access to the case-file is expected to be minimal both as regards one-off costs and operational costs per year. It would be sufficient to inform law enforcement personnel and judges of the new right to information being created in Member States' law on the basis of the Directive and it would be identical to the existing obligation under the ECHR of which law enforcement personnel, prosecutors and judges will already be apprised. Significant *one-off costs* are likely to be incurred by those three Member States where provision of information on the case currently does not include granting accused persons access to the case-file if these Member States chose to implement the duty to provide information on the charge by allowing accused persons to inspect the case-file. These costs and associated operational costs per year would be largely identical to the set-up and operational costs predicted for option B3 (see there and in part 7.2). Generally, *overall* operational costs (*not*: the isolated impact of this option on these costs) of this option will vary considerable between Member States depending on the means they employ for informing accused persons of the case against them. Thus, these overall operational costs may exceed the operational costs predicted for option B3, especially where Member States draw up written case summaries to be given to an accused persons to explain the case against him: drawing up such a summary may take more time of higher paid officials (police officers or even prosecutors) than the time estimated to take for an accused person to be given the opportunity to inspect the case-

	file held by the prosecution or a court. Depending on the way Member States choose to implement the Directive, this option is likely to yield at best a marginal reduction in terms of court and legal aid budgets both in the Member State in which criminal proceedings take and those Member States where judicial cooperation might be sought in terms of a reduced number of appeals and aborted prosecutions on grounds of inadequate provision of information on the case. However, this option is likely to lead to a marginal increase in the caseload of the ECJ (particularly due to preliminary references by Member States' courts seeking clarification on the extent of the duty to inform suspects of their case).

Policy Option B3: Creation of an EU-wide duty to inform suspects and accused persons of the case against them which includes granting them (or their lawyer) access to the case-file

Description: A Directive requiring Member States to ensure that suspects and accused persons are provided promptly with information on the case against them. In order to allow the accused person to receive adequate information on the case particularly in terms of the available evidence, the Directive envisages that, as a rule provision of information on the case has to include granting suspects or accused persons (or their lawyer) access to the case-file held by prosecution authorities or the court. Such access to the case-file will, as a rule, have to be granted once the investigation of the criminal offence is concluded, whether the suspected or accused person is in pre-trial detention or not. Access to specified documents contained in the case-file may be excluded by a competent judicial authority where access to these documents may lead to a serious risk to the life of another person or may seriously harm the internal security of the Member State in which the proceedings take place. Where a suspected or accused person is arrested at any stage of the criminal proceedings, access will have to be granted to those documents contained in the case-file which are relevant for the determination of the lawfulness of the arrest or pre-trial detention. Suspects and accused persons would have to be informed of this right. For those that do not understand the language in which the proceedings are conducted, the proposal for a Directive on the right to translation and interpretation (Measure A), currently under negotiation, should ensure that key documents in the case file are translated into a language the accused person understands. Where access to the case-file has been provided to the accused person, an adequate record of this, signed by him, would be kept. Access to the case-file would be granted free of charge.

Expected Impact	
Effectiveness in meeting objectives	This option is expected to achieve a significantly higher degree of efficiency in relation to the specific and core operational objectives than options B1 and B2 as this option would lead to the creation of an express obligation on Member States' authorities (and a corresponding right of suspects and accused persons) to provide suspects and accused persons with what stakeholders generally consider to be the optimal means of providing comprehensive information on the case. While other means of informing suspects and accused persons of the case against them (e.g. by provision of a written case summary) carry the risk of being unduly one-sided or subjective, inspection of the case-file can be expected to yield a comprehensive and thus generally more balanced overview of the case and the available evidence.
Social impact and fundamental rights	This option would lead to the creation of a uniform right applicable throughout the EU which would go beyond the rights expressly set out in the ECHR and would make it directly enforceable in Member States' court where this right has not been previously available. It would make the right to information on the case visible and contribute to the creation of an EU standard of fair trial and thus give meaning to the right to a fair trial as set out in Art. 47 CFREU.

Financial and economic impact[51]	The overall financial impact of this option depends on the extent to which Member States would be required to change their current laws and practice and is likely to be insignificant in relation to the 24 Member States that already provide access to the case-file. These costs would be incurred in providing law enforcement personnel and judges with an updating circular or other information on the Directive, especially where the Directive requires a Member State to change the timing or other technicalities relating to the process of granting accused persons access to the case-file. The financial impact on those Member States that do not yet provide access to the case-file will be higher on account of potential one-off training costs and a limited increase in operational costs per case: where training will be provided to police officers, judges and prosecutors it would be likely to result in one-off costs of between 9,000 € and 2.6 million € per Member State depending on the size of the police force and number of judicial personnel to be trained.[52] Thus, for example, one-off training costs for Estonia are likely to range between 9,500 and 35,600 € and for Spain between 585,000 and 2.19 million €. Operational costs consist of the working time costs of police officers, prosecutors or judges having to decide whether or not to deny or limit access to the case-file and of clerical staff arranging for suspects or their lawyers to be given access to the file. Indicatively, these costs are likely to range from 5 to 20 € per case depending on the level of clerical, police and judicial salaries, which is equivalent to a range of 270,000 € to 21 million € per Member State per year.[53] Thus, for example overall operational costs for Estonia are likely to range between 277,000 and 588,184 € and for Spain between 7.8 million and 21 million €. It must be stressed that these costs do not take into account either the current level of operational costs for informing suspected and accused persons of the case against them or the savings to be made when information no longer need to be transmitted using the methods currently in practice, and may be further offset to a limited extent by indirect costs savings resulting from a reduction in the number of appeals and failed prosecutions in criminal proceedings in which accused persons were not provided with adequate information on the case.[54] These potential costs saving effects cannot be quantified with any statistical precision but are expected to exceed those in option B2. In relation to the economic impact on individuals and businesses, it is likely that in those Member States which would have to introduce the right of access to the case file, this option could create a greater burden on defence lawyers taking the time to inspect the file. However, this increase in time spent inspecting a file may be offset by time saved in the preparation of the defence case on the basis of more complete information as gathered from the case-file.

6 Comparison of policy options

Table 6.1 sets out a comparison of the relative rating of the six policy options as described in part 5.2.2 against the specific and operational objectives as defined in part 4. Table 6.2 provides the relative rating for policy options B as described in part 5.2.3. The policy options are classified according to their potential to meet the objectives defined in part 4, with five checkmarks (✓✓✓✓✓) indicating highest relative potential. Ratings for expected effectiveness in achieving the objectives are given equal weight in the final sum.

51 A detailed assessment of the magnitude of this option is provided in part 7.2.

52 See Annex V, Tables 4 and 5.

53 See Annex V, Table 6.

54 This was assumed by the German Government when changing the legislation governing access to the case file with effect from 1 January 2010: Explanatory memorandum to the Bill, BT-Drs 16/1164, p14.

As regards policy options A, option A5 demonstrates the highest potential for meeting the objectives. It **is therefore preferred option A**.

As regards policy options B, option B3 is expected to yield greatest efficiency in relation to achieving the policy objectives and is therefore **the preferred option B**.

Table 6.1 - Comparison of ratings of policy options A (Information on fair trial rights)

Objectives/cost	Status quo	Policy option A1	Policy option A2	Policy option A3	Policy option A4	Policy option A5
To ensure that suspected or accused persons in the EU receive sufficient information on their fair trial rights for them to be able to exercise them efficiently	0	✓	✓✓	✓✓✓	✓✓✓✓	✓✓✓✓✓
To provide information in clear language which will be easily understood by the suspect or accused person	0	✓	✓✓	✓✓✓	✓✓✓✓	✓✓✓✓✓
To provide information at first contact with the police and include core rights under the ECHR and the CFREU which are applicable on arrest, first interrogation and during detention	0	✓	✓✓	✓✓	✓✓✓✓	✓✓✓✓✓
To ensure a means of verifying that the information has been transmitted	0	✓	✓	✓✓	✓✓✓✓	✓✓✓✓✓
To improve Member States' confidence in the fair	0	✓	✓	✓✓	✓✓✓✓	✓✓✓✓✓

Table 6.1 - Comparison of ratings of policy options A (Information on fair trial rights)

Objectives/cost	Status quo	Policy option A1	Policy option A2	Policy option A3	Policy option A4	Policy option A5
operation of the criminal justice systems throughout the EU						
Total score:	**0**	**5**	**8**	**12**	**20**	**25**
Financial burden per Member State[55]	-	100.000 € - 10 million € (overall costs for EU)	One-off set-up:[56] 0 € - 2.5 million € Operational per year:[57] 0 € - 4.6 million €	One-off set-up:[58] 0 € - 2.5 million € Operational per year:[59] 5,000 € - 4.6 million €	One-off set-up:[60] 15,000 € - 2.5 million € Operational per year:[61] 5,000 € - 4.6 million €	One-off set-up: 5,000 € - 2.5 million €[62] Operational per year:[63] 5,000 € - 4.6 million €
Potential costs savings in Member State in which criminal proceedings take place	-	low	low	low to medium	medium	medium to high

Table 6.2 – Comparison of ratings of policy options B (Information on the case)

Objectives/cost	Status quo	Policy option B1	Policy option B2	Policy option B3

55 Range based on model calculation for those Member States most likely to incur implementation costs due to current practice diverging from the one envisaged in the option.

56 This assumes *full* implementation of the Recommendation.

57 Due to lack of available statistical data, this figure does not take into account the *current* level of operational costs so that the *added* financial burden of implementation of the option cannot be calculated with precision but can expected to be a fraction of the indicative figure presented here.

58 This figure depends on the whether Member States will introduce comprehensive written notification of rights (Letter of Rights) or consider that comprehensive oral information about the rights should be ensured. One-off costs (mainly consisting of training costs) depend on this choice and could be nil where Member States already inform suspects and accused persons of their rights orally and would only have to include further rights in the oral notification without any ensuing training costs.

59 The caveat in footnote 57 applies

60 This assumes *full* implementation of the Recommendation.

61 Due to lack of available statistical data, this figure does not take into account the *current* level of operational costs so that the *added* financial burden of implementation of the option cannot be calculated with precision but can expected to be a fraction of the indicative figure presented here.

62 One-off costs to be incurred by Member States for training police officers, judges and prosecutors.

63 See footnote 57.

Table 6.2 – Comparison of ratings of policy options B (Information on the case)

Objectives/cost	Status quo	Policy option B1	Policy option B2	Policy option B3
To ensure that suspected or accused persons receive sufficiently detailed information on the case in order to enable them adequately to prepare their defence or challenge pre-trial decisions	0	✓✓	✓✓✓	✓✓✓✓✓
To provide information in a timely fashion and in such a way that the suspect or accused person understands the case against him	0	✓	✓✓✓	✓✓✓✓
To ensure a means of verifying that the information has been transmitted	0	✓	✓✓	✓✓✓
To improve Member States' confidence in the fair operation of the criminal justice systems throughout the EU	0	✓	✓✓✓	✓✓✓✓✓
Total score:	**0**	**5**	**11**	**17**
Financial burden per Member State	-	One-off:[64] 0 € - 2.6 million € Operational:[65] 270,000 € - 21	One-off: [66] 0 € - 2.6 million € Operational: 100,000 € - 30	One-off:[67] 9,000 € - 2.6 million € Operational:

[64] This assumes *full* implementation of the Recommendation.

Table 6.2 – Comparison of ratings of policy options B (Information on the case)

Objectives/cost	Status quo	Policy option B1	Policy option B2	Policy option B3
		million €	million €	270,000 € - 21 million €
Potential costs savings in Member State in which criminal proceedings take place	-	low	low	medium

7 The preferred option

This part sets out the preferred option and its expected impacts in greater detail. The preferred option is a **combination of options A5 and B3** and can be summarised as follows:

The preferred option: *A5 + B3*

Adoption of a Directive by the Council and the Parliament which obliges Member States to ensure

- that suspected and accused persons under arrest are informed of their rights in the criminal proceedings by means of a Letter of Rights in a language they understand as drawn up by Member States containing a standard EU-wide formulation of the minimum fair trial rights as set out in an Annex to the Directive and, where available, further rights pursuant to Member States' respective laws, and

- that suspected and accused persons are informed of the case against them which has to include granting them (or their lawyer) access to the case file free of charge.

7.1 EU added value and proportionality of the preferred option

The preferred option would guarantee that suspects and accused persons receive adequate and comprehensible information about immediately relevant minimum procedural rights applicable throughout the EU and are given comprehensive and generally unfiltered information about the case against them by being able to inspect the case-file at an early point in criminal proceedings. Those suspected and accused persons which have been deprived of their liberty by the police (by means of arrest and pre-trial-detention) are provided information on their immediately relevant procedural rights by means of a Letter of Rights. Through a legislative act based on Art. 82(2)(b) TFEU, the EU would create obligations on Member States'

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65 Due to lack of available statistical data, this figure does not take into account the *current* level of operational costs so that the *added* financial burden of implementation of the option cannot be calculated with precision but can expected to be a fraction of the indicative figure presented here.

66 This figure depends on the means Member States choose to inform suspects and defendants of the case against them. One-off costs (mainly consisting of training costs) depend on this choice.

67 Mainly training costs depending on number of official receiving training and level of remuneration of trainers.

authorities (and corresponding rights for suspects and accused persons) which go beyond the rights enshrined in the ECHR and, upon implementation, would be enforceable in Member States' courts. This embedding of the new rights in Member States' respective legal orders, the right of Member State courts to seek binding clarification on scope and interpretation of the rights from the European Court of Justice and the Commission's power to launch infringement proceeding against Member States not implementing or misapplying the Directive would create strong incentives for Member States to comply with their obligations arising from the Directive and contribute to making the new twofold right to information practical and effective. . Along with Measure A and all subsequent measures envisaged in the Roadmap, the preferred option would contribute to the creation of a genuine, EU-wide standard of fair trials and to confidence in criminal proceedings and to better judicial cooperation based on mutual recognition and mutual trust. It has to be recalled that this cannot be achieved by an individual measure such as the present one but that it is a step-by-step project incrementally leading to high overall standards of fundamental procedural rights protection. This step-by-step approach is illustrated particularly compellingly by preferred option A5: the EU-wide standard formulation of minimum procedural rights will initially comprise only the relevant rights laid down in Arts 5 and 6 ECHR as interpreted by the ECtHR. Plain-language reference to the rights to translation and interpretation created by the proposed Directive on the rights to translation and interpretation in criminal proceedings ("Measure A") which is currently debated by the European Parliament and the Council, will be added to the standard formulations once that Directive has come into force. Further rights to be strengthened by Measures C to E of the Procedural Rights Roadmap in the coming years will be added to the EU-wide standard formulation once these measures have been adopted. Thus, the EU-wide standard Letter of Rights will become a more potent instrument to ensure individuals access to a high level of procedural rights as the measures of the Roadmap are implemented. This incremental approach also clarifies that the preferred option will not create new substantive rights *by stealth.* Where options A5 and B3 create new duties on Member States (and corresponding rights of individuals) they do so only in relation to the core subject-matter of this measure: the right to information. They do not, however, create new rights unrelated to the provision of information; such rights are likely to be created by the other measures of the Procedural Rights Roadmap, but, again, each measure would only create new rights in its field.

Both elements of the preferred option are proportionate in relation to their effect as none of the alternative options display an equal level of effectiveness in furthering the objectives identified in part 4. Whilst both elements of the preferred option are likely to require a number of Member States to introduce changes to their criminal procedure laws in order to implement the Directive, there does not appear to be another equally effective means of ensuring that suspects and accused persons receive comprehensive, accurate and understandable information on their rights and the case against them. Both elements of the preferred option create new, EU-wide uniform duties on the part of Member States (use of a Letter of Rights and grant of access to the case-file to effect proper provision of information on rights and charges). It is precisely this harmonising effect of the preferred option that marks its effectiveness both in ensuring that suspects and accused persons receive adequate information in criminal proceedings across the EU and in promoting trust of judges in the fairness of such proceedings in Member States other than their own: options A5 and B3 will give judges the greatest certainty that adequate procedures are in place for the provision of adequate information to suspects and accused persons. They will know what minimum procedural rights a suspects would be (or would have been) informed of upon arrest and that an accused person would generally be allowed to inspect the case-file to acquaint himself with exact nature of the charge and the supporting evidence. Judges could have no similar confidence were options other than the preferred ones chosen. Thus, in the light of the limited effectiveness of all alternative options, options A5 and B3 do not go beyond what is necessary in order to achieve the objectives set out in part 4. Options A5 and B3 also appear most cost-effective in that they are expected to generate similar if not fewer costs to Member States than next effective options A4 and B2.

It also needs to be emphasised that the effect of options A5 and B4 would not be limited to those Member States only that currently do not use Letters of Rights already or grant accused persons access to the case-file. Even amongst those Member States which already have Letters of Rights and provide access to case-files the preferred option will have a harmonising effect, particularly in terms of the actual content of Member States' Letters of Rights and the riming at which the Letter has to be provided and access to the case-file given.

7.2 Potential magnitude of economic and financial impact

Assessing the likely financial and economic impact of the preferred option with a degree of quantitative precision has proved to be difficult. This is largely due to the lack of detailed data relating to current police and court practice of informing suspects and accused persons of their rights and the case against them. Thus, no exact figures could be developed to calculate current overall operational costs for providing suspects and accused persons with information in order to have a basis for assessing the financial *impact* of the preferred option. Model calculations for one-off costs and overall operational costs for the options (as set out in detail in Annex V) relied on extrapolations based on wide ranges of cost factors reflecting the significant differences in remuneration levels between Member States. Taking account of this, the financial impact of the preferred option on Member States is expressed in costs ranges. The level of these ranges is determined by a number of factors, most importantly the number of criminal proceedings per year and the number of police officers, prosecutors and criminal court judges. Significant divergence between Member States in terms of these numbers explains the wide range of estimated predicted costs for individual Member States. As generally rather wide ranges of base cost factors were used throughout the model calculations it is likely that the actual costs per Member State affected would be reflected best by the lower half of the costs range calculated for each of the Member States in Annex V.

Member States' potential savings owing to a reduction in the number of appeals or delay in judicial cooperation proceedings cannot be estimated with any statistical precision due to lack of Member State data on costs per case. Thus, only indicative qualitative expectations in non-numerical terms could be provided based on stakeholder judgement.

Core elements of preferred option and resulting necessary action	**Financial or economic impact**
Creation of an EU-wide duty to inform suspects and accused persons about their rights <u>by means of a Letter of Rights including EU-wide standard formulations of minimum rights to be included in the Letter of Rights</u>	**Impact on Member States:** <u>One-off set-up costs:</u> The main financial impact of the comprehensive introduction of an obligation to provide suspects and accused persons with Letters of Rights containing a mandatory EU-wide standard formulation of minimum rights are one-off set-up/inception costs incurred for the introduction of Letter of Rights schemes in Member States. These consist primarily of the costs of drafting the Letters in each Member State, for translating them into an appropriately wide range of languages and for training police officers and, where considered necessary, prosecutors and judges. • <u>Drawing up and translating national Letters of Rights:</u> Drafting and translation into Member States' 23 official languages of the EU-wide standard formulation of minimum rights to be contained in each national Letter of Rights will be effected by the European Commission as part of the legislative process of adopting the Directive. Member States would thus only have to bear the costs of translating the mandatory standard formulation into languages other than the 23 official languages of Member States. On the basis of German and UK experience it is assumed that translation into a further 23 languages would be necessary. It is expected that Member States would cooperate in this translation exercise so that these costs of translating the standard formulation into further languages would only be incurred once and shared by Member States. Depending on the level of remuneration for translation services, the one-off costs of this translation are likely to range between 600 and 5,800 €.[68] • Member States individually would be free to include in their Letters of Rights those procedural rights enshrined in national legislation which go further than the EU-wide minimum rights. Thus, Member States might incur drafting and translation costs. Those 11 Member States that already use Letters of Rights to inform suspects and accused persons of their rights are unlikely to have to incur these costs as they can

[68] See Annex V, A.1.(2).

use their current formulations and translations alongside the EU-wide standard formulation for minimum rights where applicable. Drafting costs are likely to vary considerably between Member States on account of differing levels of civil service salaries where the drafting and translation would be provided in-house by civil servants (as was the case in Germany and Austria where the Ministries of Justice drafted the Letters and used Foreign Affairs Ministry staff for the translation) and on the levels of remuneration of legal experts/professional lawyers and translators where drafting and translation would be procured externally. Model calculations indicate a range of drafting costs for information on additional national rights of between 5,000 and 50,000 €.[69] Translation costs depend on the length of a the draft to be translated, the level of remuneration for translation services and the number of languages into which Letters of Rights would have to be translated, which, in turn, would be determined on the basis of law enforcement frontline experience in each Member State (e.g. translation into 46 languages was considered necessary in Germany, but into 42 only in the UK). Model calculations envisaging translation of a 2 page additional formulation of national rights going beyond the standard EU-wide minimum rights as set out in the Directive into 46 languages yield an indicative costs range of approximately 400 to 4,600 € per Member State. [70] Thus, set-up costs are likely to vary between 5,400 and 54,600 € per Member State.

Informing and training police officers, prosecutors and judges: In Member States that already operate Letter of Rights schemes, law enforcement frontline staff, prosecutors and judges are likely to be informed of necessary amendments to Letters of Rights by inclusion of the changes in regular circulars, written updates, staff meeting presentations so that costs incurred would be insignificant. Where Member States introduce Letter of Rights schemes for the first time, training costs can be expected. Depending on the level of remuneration of training personnel in Member States and the number of officials to be trained model calculations indicate a potential costs impact of between 5,000 € and 2.4 million € per Member State.[71] The following exemplary calculations provide an indication of these one-off costs for a small Member State and a large one: Malta: 5,200 € - 20,000 €; France: 650,000 € - 2.4 million €. As not all of a Member States' police officer will require or be given full training on the effect of the Directive, it is likely that the actual costs figure will verge towards the bottom end of the costs ranges indicated above.

Impact on operational costs pr year: The effect of the preferred option on operational costs per Member State depends primarily on the level of information on rights already provided by police officers, judges and prosecutors to suspects and accused persons and the time this provision of information currently takes. In relation to those Member States already using Letters of Rights it is unlikely that changes to these Letters of Rights necessitated by the Directive (use of the standard EU-wide formulation of minimum rights) would lead to a significant increase in the time spent by law enforcement frontline staff providing oral explanation on the rights set out in the Letter of Rights. Thus, budgetary implications of the Directive on the Member States operating Letter of Rights schemes already are likely to be minimal.

For those Member States that currently inform suspects and accused persons orally about their rights, the effect on per case costs will depend on the comprehensiveness and level of detail of the oral information currently provided to suspects and accused persons: where Member States already inform suspects orally and in sufficient detail about all the rights required under the Directive, stakeholders indicated that the introduction of Letters of Rights as envisaged by the Directive may actually reduce operational costs per case as the provision of a readily comprehensible written notification of suspects' rights in a Letter of Rights may reduce the need for very lengthy oral explanations of these rights in a number of cases.

69 See model calculation in Annex V, A.1.(1).
70 See model calculation in Annex V, A.1.(2).
71 See Annex V, Tables 1 and 2.
72 See Annex V, Table 3.

	However, where police officers, prosecutors or judges in a Member State currently provide suspects and accused persons with very limited oral information about their rights only (e.g. by not informing about *all* the rights of which the Directive would require notification), it is likely that the Directive will lead to an increase in the time police officers, prosecutors or judges would spend on explaining fair trial rights when they issue the Letter of Rights envisaged in the Directive. As Member States do not collect reliable statistical data about the content and level of detail of information on fair trial rights law enforcement staff, prosecutors or judges currently provide to suspects and accused persons, the precise budgetary effect of the Directive in terms of increased operational costs per case cannot be quantified. However, it is possible to indicate the *overall* operational costs per year per Member State of informing suspects and accused persons of their rights by means of the Letter of Rights as envisaged by the Directive. These are *not* the *added* costs for informing suspects and accused persons of their rights which may be incurred by complying with the Directive, but the *overall* costs of providing this information. Thus, the *added* costs incurred by Member States in implementing the Directive are likely to be fraction of these costs only. These overall costs for informing suspects and accused persons of their rights (including interpretation costs for suspects who do not understand the language of proceedings) can be expected to range from 5,000 € per year for Member States with a very small number of criminal proceedings per year and low public sector pay levels to 4.6 million € for Member States with a very high number of criminal proceedings per year and high public sector pay levels.[72] Operational costs for the physical distribution of the Letters of Rights to those authorities having to use them are expected to be low; generally, it can be expected that Letters of Rights would centrally be made available online for printing out in Intranet-networked police stations or courts (this is the case in Germany and the UK). The following exemplary calculations provide an indication of the overall operational costs for a small Member State and a large one: Cyprus: 5,000 € - 30,000 €; France: 1.9 million € - 4.6 million €**.** Aggregate costs of option A5 for those 16 Member States most affected: minimum: 11 million €, maximum: 50.1 million €; of these one-off costs: minimum: 1.7 million €; maximum 7.5 million €.
Creation of an EU-wide duty to inform suspects and accused persons of the case against them which includes granting them (or their lawyer) access to the case-filei	**Impact on Member States:** One-off inception costs: currently suspects and accused persons in 23 Member States are provided with information on the case against them which includes the possibility of inspecting the case file, so most Member States may incur one-off costs on a negligible scale only when implementing the Directive. Thus, one-off costs for introducing a right to inspect the case file are expected only for those three Member States that currently do not provide for such a right in their national laws. These costs are likely to result mainly from informing and training police officers, prosecutors and judges: these costs will depend on the level of remuneration of external trainers or the administrative costs of internal trainers and the number of officials to be trained. Model calculations indicate a cost range of between 9,000 € and 2.6 million € per Member State. However, the Member States affected may chose to provide for more limited training than envisaged in the model calculation, thus reducing the financial impact of the Directive in terms of one-off costs.[73] The following exemplary calculations provide an indication of these one-off costs for two of the three most affected Member States: Estonia: 9,500 € - 35,600 €; Spain: 585,000 € - 2.19 million €**.** As not all of a Member States' police officer will require or be given full training on the effect of the Directive, it is likely that the actual costs figure will verge towards the bottom end of the costs ranges indicated above.Operational costs per year: Those Member States that do not yet provide for access to the case-file for suspects and accused persons (or their lawyer) to

[73] See Annex V, Tables 4 and 5.

	inform them about the case against them will incur operational costs per case for providing such access. These consist primarily of the costs of police officers, judges or prosecutors deciding whether or not exceptionally to refuse or limit inspection of the case-file and of police officers or clerical court staff providing for the case-file to be inspected by the suspect or accused persons or to be collected by the lawyer for inspection. Model calculations for the Member States that would have to introduce a right of access to the case-file indicate a range of overall operational costs per year between 270,000 € to 21 million € per Member State depending on the number of proceedings and the level of public sector pay in the Member States concerned.[74] These costs are likely to be offset to some extent by savings resulting from less time spent by officials informing suspects and accused persons of the case against them by other means currently used. As there is no data available on time currently spent by law enforcement personnel, prosecutors or judges in informing suspects and accused persons of the case against them, the level of the likely offset cannot be predicted with precision. The following exemplary calculations provide an indication of the overall operational costs for two of the three most affected Member States: Estonia: 277,000 € - 588,184 €; Spain: 7.81 million € - 21 million €. Due to high top-end salary figures for clerical staff involved in the process of effecting access to the case-file and imprecision of other costs factors used in the model calculation, it is more likely than not that the actual overall operational costs per Member State of this option verge towards the bottom-end of the costs range indicated above. Aggregate costs of option B3 for the three Member States most affected: minimum: 14 million €, maximum: 41 million €; of these one-off costs: minimum: 1.2 million €; maximum: 4.6 million € **Impact on legal profession:** In relation to the economic impact on individuals and businesses, it is likely that in those Member States which would have to introduce the right of access to the case file, this option is likely to create a greater burden on defence lawyers taking the time to inspect the file. However, this increase in time spent on inspecting a file may be offset by time saved in the preparation of the defence case on the basis of more complete information gathered from the case-file.
Aggregate effects of both elements	**Impact on Member States:** Potential for costs savings at Member State level: Where suspects and accused persons are informed sufficiently and in a timely manner both about their rights and the case against them by means which allow verification of the provision of the required information, stakeholders expect fewer instances of appeals being lodged by accused persons on the ground that they were provided with insufficient or even no information about their rights. Compliance with the information requirements could be verified at an early stage of proceedings so as to ensure compliance with both information requirements. This may lead to a limited reduction in Member States' police and courts budget. **Impact on EU bodies and budget:** Introducing two new rights for suspects and accused persons at the level of EU law can be expected to lead to a limited increase in the case-load of the ECJ: particularly in the first decade following the lapse of the deadline for implementing the Directive in Member States' laws, Member States' courts are likely to seek clarification of the scope of these rights and the potential consequences of their breach by making preliminary references under Art. 267 TFEU. This can have a low to medium impact on the ECJ's budget. **Impact on international organisations:** Implementation of the Directive may result in a limited reduction in the number of applications to the ECtHR where a breach of a suspect or accused person's right to a fair trial

[74] See Annex V, Table 6.

	on grounds of insufficient information on rights and the case is claimed.

8. Transposition, monitoring and evaluation

The timeframe for transposition of the Directive by Member States will be two years from its entry into force. As the Directive creates only a comparatively limited number of Member State obligations which, to some extent, mirror existing ECHR obligations or already exist in a number of Member States already, it is expected that a two-year deadline would provide Member States with sufficient time to effect necessary changes to their respective national laws and practice. Potential risks to implementation in time will be identified in an Implementation Plan accompanying the proposal for the Directive which setting out relevant measures by the Commission aimed at countering these risks.

Providing for a robust monitoring and evaluation mechanism is crucial to ensure that the rights envisaged in the Directive are complied with in practice as well as in legislation.The Directive will stipulate that Member States' should report on the effective implementation of legislative or non-legislative measures based on the nature of the proposed changes. Indicators to evaluate the implementation of the proposal against the policy objectives are to be found in Annex VII. Data provided by Eurostat, Eurobarometer and the Council of Europe will enable the formation of a useful baseline for monitoring the situation. Besides quantitative data provided by Member States, other possible sources of qualitative information on legislative and practical compliance will be gathered from the Justice Forum, the CPT[75], the ECtHR, the European Network of Councils for the Judiciary and national and European Bar Associations. If the anticipated review of the mandate of the Fundamental Rights Agency extends that mandate to former third pillar areas, it could play a role in collecting data, carrying out studies and compiling reports on the rights covered in the Directive. Member States should be encouraged to collect relevant data to assist in this process as there is currently a lack of reliable empirical data.

The Commission envisages carrying out a specific empirical study with an emphasis on data collection 3-5 years into the implementation of the proposal to gain in-depth quantitative and qualitative insights into the effectiveness of the proposal. The data would enable the Commission to evaluate the actual compliance in Member States more robustly than using the means hitherto available. Once all Roadmap Measures are in place, it will be essential to evaluate each Measure in context as well as the efficiency of the Roadmap as a whole.

75 At the experts meeting on 26-27 March 2009 , the CPT offered to assist in monitoring and evaluating the implementation of procedural safeguards instruments in the context of CPT visits to Council of Europe Member States.

ANNEXES

COUNCIL OF THE EUROPEAN UNION

Brussels, 24 November 2009

15434/09

DROIPEN 149
COPEN 220

LEGISLATIVE ACTS AND OTHER INSTRUMENTS

Subject: RESOLUTION OF THE COUNCIL on a Roadmap for strengthening procedural rights of suspected or accused persons in criminal proceedings

Resolution of the Council

of

on a Roadmap for strengthening procedural rights of suspected or accused persons in criminal proceedings

THE COUNCIL OF THE EUROPEAN UNION,

Whereas:

(1) In the European Union, the Convention for the Protection of Human Rights and Fundamental Freedoms (the "Convention") constitutes the common basis for the protection of the rights of suspected or accused persons in criminal proceedings, which for the purposes of this Resolution includes the pre-trial and trial stages.

(2) Furthermore, the Convention, as interpreted by the European Court of Human Rights, is an important foundation for Member States to have trust in each other's criminal justice systems and to strengthen such trust. At the same time, there is room for further action on the part of the European Union to ensure full implementation and respect of Convention standards, and, where appropriate, to ensure consistent application of the applicable standards and to raise existing standards.

(3) The European Union has successfully established an area of freedom of movement and residence, which citizens benefit from by increasingly travelling, studying and working in countries other than that of their residence. However, the removal of internal borders and the increasing exercise of the rights to freedom of movement and residence have, as an inevitable consequence, led to an increase in the number of people becoming involved in criminal proceedings in a Member State other than that of their residence. In those situations, the procedural rights of suspected or accused persons are particularly important in order to safeguard the right to a fair trial.

(4) Indeed, whilst various measures have been taken at European Union level to guarantee a high level of safety for citizens, there is an equal need to address specific problems that can arise when a person is suspected or accused in criminal proceedings.

(5) This calls for specific action on procedural rights, in order to ensure the fairness of the criminal proceedings. Such action, which can comprise legislation as well as other measures, will enhance citizens' confidence that the European Union and its Member States will protect and guarantee their rights.

(6) The 1999 Tampere European Council concluded that, in the context of implementing the principle of mutual recognition, work should also be launched on those aspects of procedural law on which common minimum standards are considered necessary in order to facilitate the application of the principle of mutual recognition, respecting the fundamental legal principles of Member States (Conclusion 37).

(7) Also, the 2004 Hague Programme states that further realisation of mutual recognition as the cornerstone of judicial cooperation implies the development of equivalent standards of procedural rights in criminal proceedings, based on studies of the existing level of safeguards in Member States and with due respect for their legal traditions (point III 3.3.1.).

(8) Mutual recognition presupposes that the competent authorities of the Member States trust the criminal justice systems of the other Member States. For the purpose of enhancing mutual trust within the European Union, it is important that, complementary to the Convention, there exist European Union standards for the protection of procedural rights which are properly implemented and applied in the Member States.

(9) Recent studies show that there is wide support among experts for European Union action on procedural rights, through legislation and other measures, and that there is a need for enhanced mutual trust between the judicial authorities in the Member States[76]. These sentiments are echoed by the European Parliament[77]. In its Communication for the Stockholm programme[78], the European Commission observes that strengthening the rights of defence is vital in order to maintain mutual trust between the Member States and public confidence in the European Union.

(10) Discussions on procedural rights within the context of the European Union over the last few years have not led to any concrete results. However, a lot of progress has been made in the area of judicial and police cooperation on measures that facilitate prosecution. It is now time to take action to improve the balance between these measures and the protection of procedural rights of the individual. Efforts should be deployed to strengthen procedural guarantees and the respect of the rule of law in criminal proceedings, no matter where citizens decide to travel, study, work or live in the European Union.

(11) Bearing in mind the importance and complexity of these issues, it seems appropriate to address them in a step-by-step approach, whilst ensuring overall consistency. By addressing future actions, one area at a time, focused attention can be paid to each individual measure, so as to enable problems to be identified and addressed in a way that will give added value to each measure.

(12) In view of the non-exhaustive nature of the catalogue of measures laid down in the Annex to this Resolution, the Council should also consider the possibility of addressing the question of protection of procedural rights other than those listed in that catalogue.

(13) Any new EU legislative acts in this field should be consistent with the minimum standards set out by the Convention, as interpreted by the European Court of Human Rights,

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[76] See *inter alia* the "*Analysis of the future of mutual recognition in criminal matters in the European Union*", report of 20 November 2008 by the *Université Libre de Bruxelles.*

[77] See e.g. the "*European Parliament recommendation of 7 May 2009 to the Council on development of an EU criminal justice area*", 2009/2012(INI), point 1 a).

[78] "*An area of freedom, security and justice serving the citizen*", COM (2009) 262/4 (point 4.2.2.).

HEREBY ADOPTS THE FOLLOWING RESOLUTION:

1. Action should be taken at the level of the European Union in order to strengthen the rights of suspected or accused persons in criminal proceedings. Such action can comprise legislation as well as other measures.

2. The Council endorses the "Roadmap for strengthening procedural rights of suspected or accused persons in criminal proceedings" (hereinafter referred to as "the Roadmap"), set out in the Annex to this Resolution, as the basis for future action. The rights included in this Roadmap, which could be complemented by other rights, are considered to be fundamental procedural rights and action in respect of these rights should be given priority at this stage.

3. The Commission is invited to submit proposals regarding the measures set out in the Roadmap, and to consider presenting the Green Paper mentioned under point F.

4. The Council will examine all proposals presented in the context of the Roadmap and pledges to deal with them as matters of priority.

5. The Council will act in full cooperation with the European Parliament, in accordance with the applicable rules, and will duly collaborate with the Council of Europe

Roadmap for strengthening procedural rights of suspected or accused persons in criminal proceedings

The order of the rights indicated in this Roadmap is indicative. It is emphasised that the explanations provided below merely serve to give an indication of the proposed action, and do not aim to regulate the precise scope and content of the measures concerned in advance.

Measure A: Translation and Interpretation

Short explanation:

The suspected or accused person must be able to understand what is happening and to make him/herself understood. A suspected or accused person who does not speak or understand the language that is used in the proceedings will need an interpreter and translation of essential procedural documents. Particular attention should also be paid to the needs of suspected or accused persons with hearing impediments.

Measure B: Information on Rights and Information about the Charges

Short explanation:

A person that is suspected or accused of a crime should get information on his/her basic rights orally or, where appropriate, in writing, e.g. by way of a Letter of Rights. Furthermore, that person should also receive information promptly about the nature and cause of the accusation against him or her. A person who has been charged should be entitled, at the appropriate time, to the information necessary for the preparation of his or her defence, it being understood that this should not prejudice the due course of the criminal proceedings.

Measure C: Legal Advice and Legal Aid

Short explanation:

The right to legal advice (through a legal counsel) for the suspected or accused person in criminal proceedings at the earliest appropriate stage of such proceedings is fundamental in order to safeguard the fairness of the proceedings; the right to legal aid should ensure effective access to the aforementioned right to legal advice.

Measure D: Communication with Relatives, Employers and Consular Authorities

Short explanation:

A suspected or accused person who is deprived of his or her liberty shall be promptly informed of the right to have at least one person, such as a relative or employer, informed of the deprivation of liberty, it being understood that this should not prejudice the due course of the criminal proceedings. In addition, a suspected or accused person who is deprived of his or her liberty in a State other than his or her own shall be informed of the right to have the competent consular authorities informed of the deprivation of liberty.

Measure E: Special Safeguards for Suspected or Accused Persons who are Vulnerable

Short explanation:

In order to safeguard the fairness of the proceedings, it is important that special attention is shown to suspected or accused persons who cannot understand or follow the content or the meaning of the proceedings, owing, for example, to their age, mental or physical condition.

Measure F: A Green Paper on Pre-Trial Detention

Short explanation:

The time that a person can spend in detention before being tried in court and during the court proceedings varies considerably between the Member States. Excessively long periods of pre-trial detention are detrimental for the individual, can prejudice the judicial cooperation between the Member States and do not represent the values for which the European Union stands. Appropriate measures in this context should be examined in a Green Paper.

Annex II – Examples of Letters of Rights

a. Germany (English version):[79]

Information for provisionally arrested persons

(provisional arrest pursuant to sections 127 and 127b of the German Code of Criminal Procedure)

Office and file number: _____

Surname, first name of the accused: _____

Date and place of birth of the accused: _____

You have been provisionally arrested. You have the following rights:

1. Without delay, at the latest on the day after your arrest, you must be brought before a judge who has to question you and decide on the continuation of your deprivation of liberty, unless you are released earlier.

2. You can make a statement about the charges against you or refrain from making statements about the case.

3. You can apply for individual items of evidence to be taken in your defence.

4. You can consult a defence counsel of you own choosing at any time, even before any questioning has taken place.

5. You can request to be examined by a male or a female doctor of your choice.

6. You can notify a relative or another person you trust of the arrest, provided that such notification does not conflict with the purpose of the investigation.

79 http://www.bmj.de/enid/2388cb7d879ab1247684347347e0c27e,0/Fachinformationen/Belehrungsformulare_1mi.htmli

If you are a foreign national, you can also request that the competent consulate of your home country be notified. You can have communications sent to the consulate.

If you do not have a sufficient command of German, you can request the assistance of an interpreter during the proceedings. The interpreter will be provided for you free of charge.

I have received the preceding information (one page) today.

(…) In addition, I have been informed of my rights orally.

(…) I have understood the information.

---	---
(place, date, time)	(signature of the arrested person)
	( ) The person concerned has refused to sign
---	---
(surname, rank of official)	(signature of official)

Belehrung von vorläufig festgenommenen Personen nach §§ 127, 127b StPO – **Englisch**

b. England and Wales:[80]

The following rights and entitlements are guaranteed to you under the law in England and Wales and comply with the European Convention on Human Rights.

You will find more details about these rights inside

Remember your rights:

1. Tell the police if you want a solicitor to help you while you are at the police station. It is free.

2. Tell the police if you want someone to be told that you are at the police station. It is free.

3. Tell the police if you want to look at their rule-book called the Codes of Practice.

More information for people arrested by the police

Please keep this information and read it as soon as possible. It will help you to make decisions while you are at the police station.

1. Getting a solicitor to help you

- A solicitor can help and advise you about the law.
- If you want a solicitor, tell the police custody officer. The police will help you get in touch with a solicitor for you.
- The police must let you talk to a solicitor at any time, day or night, when you are at a police station. It is free.
- If you do not know of a solicitor in the area or you cannot get in touch with your own solicitor, you can speak to the duty solicitor. It is free. The police will help you contact him or her for you. The duty solicitor is nothing to do with the police.
- You are entitled to a private consultation with your Solicitor on the telephone or they may decide to come and see you at the Police Station.
- Usually, the police are not allowed to ask you questions until you have had the chance to talk to a solicitor. When the police ask you questions you can ask for a solicitor to be in the room with you.

[80] http://police.homeoffice.gov.uk/operational-policing/powers-pace-codes/rights-entitlements-foreign-lang.html

- If you ask to speak to a solicitor it does not make it look like you have done anything wrong.
- If a solicitor does not turn up, or you need to talk to a solicitor again, ask the police to contact him or her again.
- If you tell the police that you don't want to speak to a solicitor but then you change your mind, tell the police custody officer. The police will then help you contact a solicitor for you.

If you are asked questions about a suspected offence, you do not have to say anything. However, it may harm your defence if you do not mention when questioned something which you later rely on in court. Anything you do say may be given in evidence.

2. Telling someone that you are at the police station

- You can ask the police to contact someone to inform them that you are at the police station. It is free. They will contact someone for you as soon as they can.

3. Looking at the Codes of Practice

- The Codes of Practice is a book that tells you what the police can and cannot do while you are at the police station.
- The police will let you read the Codes of Practice but you cannot read it for so long that it holds up the police finding out if you have broken the law.
- If you want to read the Codes of Practice, tell the police custody officer.

Getting details of your time at the police station

- Everything that happens to you when you are at the police station is put on paper and is called the custody record.
- When you leave the police station, you, your solicitor or your appropriate adult can ask for a copy of the custody record. The police have to give you a copy of the custody record as soon as they can.
- You can ask the police for a copy of the custody record up to 12 months after you leave the police station.

How you should be cared for

These are short notes about what you can expect while you are kept at the police station. To find out more, ask to see the book called the Codes of Practice. Inside its back cover you will find a list of where to find more information about each of these things. Ask the police custody officer if you have any questions.

Keeping in touch

As well as talking to a solicitor and having a person told about your arrest you will usually be allowed to make one phone call. Ask the police if you would like to make a phone call. You can

also ask for a pen and paper. You may be able to have visitors but the custody officer can refuse to allow that.

Your Cell

If possible you should be kept in a cell on your own. It should be clean, warm and lit. Your bedding should be clean and in good order. You must be allowed to use a toilet and have a wash.

Clothes

If your own clothes are taken from you, then the police must provide you with an alternative form of clothing.

Food and drink

You must be offered 3 meals a day with drinks. You can also have drinks between meals.

Exercise

If possible you should be allowed outside each day for fresh air.

If you are unwell

Ask to see a doctor if you feel ill or need medicine. The police will call a doctor for you and it is free. You can ask to see another doctor but you may have to pay for this. You may be allowed to take your own medicine but the police will have to check with a doctor first. A nurse may see you first, but they will send for a doctor if you need one.

How long can you be detained?

You can normally be detained for up to 24 hours without being charged. This can be longer but only if a Police Superintendent allows it to happen. After 36 hours only a court can allow more time without you being charged. Every so often a senior police officer has to look into your case to see if you should still be kept here. This is called a review. You have the right to have your say about this decision, unless you are not in a fit state.

When the police question you

- The room should be clean, warm and lit.
- You should not have to stand up.
- The police officers should tell you their name and their rank.
- You should have a break at normal meal times and a break for a drink after about two hours.
- You should be allowed at least 8 hours rest in any 24 hours you are in custody.

People who need help

- If you are under 17, or you have learning problems or a mental problem then you should have someone with you when the police do certain things. This person is called your “appropriate adult”.
- Your appropriate adult must be with you when the police tell you about your rights and tell you why you are being kept at the police station. He or she must also be with you when the police read the police caution to you. He or she must also be with you if you are interviewed.
- The police might also need to do one of the things listed below while you are at the police station. Your appropriate adult should be with you for the whole time if the police do any of these things:
  - Interview you or ask you to sign a written statement or police notes.
  - Review your case.
  - Remove more than your outer clothes.
  - Carry out anything about an identification parade.
  - Charge you with an offence.

You can speak to your solicitor without your appropriate adult in the room if you want to.

Getting an interpreter to help you

If you do not speak or understand English the police will arrange for someone who speaks your language to help you.

If you are deaf or have difficulty speaking the police will arrange for a British Sign Language / English interpreter to help you.

When the police ask you questions the interpreter will make a record of the questions and your answers in your own language. You will be able to check this before you sign it as an accurate record.

If you make a statement to the police, the interpreter will make a copy of that statement in your own language for you to check and sign as correct.

People who are not British

If you are not British, you can tell the police that you want to contact your High Commission, Embassy or Consulate to tell them where you are and why you are in the police station. They can also visit you in private or arrange for a solicitor to see you.

Special Times:

Getting a solicitor to help you

There are some special times when the police can ask you questions before you have talked to a solicitor. Information about these special times is given in the Codes of Practice. This is the book that that sets out what the police can and cannot do while you are at the police station. If you want to look up the details, they are in paragraph 6.6 of Code C of the Codes of Practice.

There is one special time when the police will not let you speak to the solicitor that you have chosen. When this happens the police must let you talk to another solicitor. If you want to look up the details, it is in Annex B of Code C of the Codes of Practice.

Telling someone that you are at the police station

There are some special times when the police will not allow you to contact anyone. Information about these special times is given in the Codes of Practice. If you want to look up the details, it is in Annex B of Code C of the Codes of Practice.

Breath tests

If you are under arrest because of a drink drive offence, you have the right to speak to a solicitor. That right does not mean you can refuse to give the police samples of breath, blood or urine even if you have not yet spoken to the solicitor.

Independent Custody Visitors

There are members of the community who are allowed access to police stations unannounced. They are known as independent custody visitors and work on a voluntary basis to make sure that detained people are being treated properly and have access to rights. You do not have a right to see an independent custody Visitor and cannot request that an independent custody visitor visit you. If an independent custody visitor does visit you while you are in custody they will be acting independently of the police to check that your welfare and rights have been protected. However, you do not have to speak to them if you do not wish to.

ANNEX III:

CURRENT SITUATION IN MEMBER STATES IN RELATION TO THE PROVISION OF INFORMATION ON FAIR TRIAL RIGHTS

Key:

O : Oral provision of information

W: provision of information in writing by other means than Letter of Rights[81]

LR: Letter of Rights[82]

N/A: Right not applied in practice

NO: No Right

Country	Right to access evidence	Right to remain silent	Right to call expert/witness	Right to translation	Right to interpretation	Right to legal assistance
Austria	O + LR	O + LR	O + LR	NO	O + LR	O + W
Belgium	**N/A**	**N/A**	**N/A**	**O**	**O**	**W**
Bulgaria	O+W	O +W	O +W	NO	N/A	W
Cyprus	O	O	O	O	O	O
Czech Republic	LR	LR	LR	LR	LR	O + W
Denmark	**N/A**	**O**	**N/A**	**N/A**	**N/A**	**O**
EstoniaE	N/A	O+W	O +W	N/A	N/A	O
Finland	N/A	N/A	N/A	N/A	N/A	O
France	N/A	NO	N/A	NO	N/A	O

81 There are several options by which information can be provided in writing but not amounting to a Letter of Rights, such as posters in police stations or the simple provision of suspects and accused persons with a copy of the legal provisions governing their right.

82 While there is no official definition of a Letter of Rights, in the study on EU Procedural Rights in Criminal Proceedings (2009) the LR is defined as 'written information of the suspect's procedural rights in a standardised form' (p.34); it is possible to narrow the scope of this definition of LR to (1) easy and accessible document and understandable information on rights, (2) in a standardised form, (3) that is given to the suspect in the initial contacts with investigating authorities. The latter definition was provided directly by Taru Spronken and will be used in 'EU-wide Letter of Rights in criminal proceedings: towards best practice', Maastricht University, 2010

Germany	O	**LR**	**W+LR**	**N/A**	LR	**O+LR**
Greece	O	O	N/A	O	O	O
Hungary	W	O	O	O +W	O + W	O
Ireland	O	O	O	W	O	W
Italy	LR	O	O	N/A	N/A	O
Latvia	LR	O	NO	NO	O	W
Lithuania	O + W	O + W	O+W	O +W	O + W	O
Luxembourg	**N/A**	**N/A**	**N/A**	**N/A**	**O + W + LR**	**LR**
Malta	**N/A**	**O + W**	**N/A**	**NO**	**N/A**	**N/A**
The Netherlands	N/A	O+LR	W	N/A	N/A	N/A
Poland	LR	LR	LR	LR	LR	O +W
Portugal	O	O	NO	NO	O	W
Roumania	O	O+W	O	O	O	O
Slovakia	LR	O	O	LR	LR	LR
Slovenia	**O**	**O**	**O**	**O**	**O**	**O**
Spain	N/A	O	O	O	LR	LR
Sweden	O	O	O + W	O	O +LR	O
United Kingdom (England and Wales)	N/A	O + LR	O	N/A	LR	O + LR

ANNEX IV

General statistical information on the number of criminal proceedings in the EU

	2006	2007	2008
AT	238111	247021	240554
BE*	49884	51243	51127
BL	34840	33577	38313
CY	1441	1903	1903
CZ	69445	75728	75728
DK	75202	73078	
EE	51834	50375	50977
FI*	116979	116789	113462
FR			744832
DE			872573
HL	247626	247252	240042
HU	425941	426914	408407
IE*			94215
IT	1207088	1216655	1195300
LV*	51073	50490	48611
LT*	75751	74914	72060
LU	10441	10539	10356
MT*	9015	9026	8783
NL	134400	127600	127400
PL			12899
PT			431919
RO*	481003	477278	460842
SK		110802	104758
SI	14545	15710	15329

SP		944962	995064
SE			119244
E&W	1779300	1732500	1640000
EU 27	**5073918**	**6094356**	**8174698**

*data are not available

NB: 1. Evidence on the number of criminal proceedings across Member State was collected directly from national statistics institutes, where available. Data are not available for six countries (Belgium, Finland, Ireland, Latvia, Lithuania and Romania).

2. where national statistics on number of criminal proceedings are not available, we have relied on extrapolation; we have calculated the annual percentage of criminal proceedings within the overall population in those countries for which figures are available and calculated a European average using this percentages; we then used this average to calculate the number of criminal proceedings in the countries for which data are not available. By multiplying the average found by the overall population in each remaining Member State (Belgium, Finland, Ireland, Latvia, Lithuania and Romania), we found the annual number of criminal proceedings in the Member States for which official statistics are not available.

ANNEX V – MODEL CALCULATIONS OF COST IMPACTS

A. Model calculations for the provision of information on rights by means of a Letter of Rights (option A4), containing at least EU-wide standard formulations of minimum rights (option A5)

1. One-off set-up costs

(1) Drafting of Letters of Rights:

Where Member States have to develop **country-specific Letters of Rights**, the costs would have to be borne by each of them. In the past, Letters of Rights (LR) have predominantly been developed internally by Member States' government departments (such as Ministries of Justice). This has been the case in Germany and in Austria (where the LR was the result of collaboration between the Ministry of Justice and the Ministry of Internal Affairs). In the UK the Letter of Right has been developed by a team of external legal experts under a research programme. Stakeholders indicated that this required the work of 5 legal experts, working for 5 days.

Pay levels for external legal experts vary significantly across Member States. Legal experts cost their contribution on the base of a large variety of units and in particular on the base of the expertise they need to provide, which depends on the particular field. Moreover, the Council of Bars and Law Societies of Europe (CCBE) confirmed that, depending on whether the Ministry of Justice would rely on academics or lawyers in legal firms, costs would vary widely. In the UK, the daily rate for a legal expert is €1,000. In the other Member States, we assume that the cost of a legal expert does not diverge much from lawyers' fees.

Estimates of daily lawyers' fees are provided below:

- Bulgaria, Romania, Slovakia, Czech Republic, Poland, Lithuania: €400 - €800
- Estonia, Portugal, Hungary, Slovenia, Greece, Belgium: €800 - €2,000
- Spain, France, Germany, Austria, Latvia, the Netherlands: €2,000 - €2,800
- Ireland, Italy, Sweden, Finland: €2,800 - €4,000

The daily rate of a legal expert therefore ranges between €400 and €4,000. It is important to note that the figures provided refer to the daily fees of lawyers in civil proceedings, while the daily fee of criminal lawyers might be different.

On the basis of the above assumptions the cost of the development of an exclusively country-specific Letters of Rights, across the EU, if outsourced to a team of legal experts would be:

Min: €400 x 5 persons x 5 days = €10,000

Max: €4,000 x 5 persons x 5 days = €100,000

In conclusion, the cost of developing an exclusively country-specific Letter of Rights depends on whether the project is subcontracted externally or conducted internally at the Ministry of Justice. Therefore it ranges between 10,000 € and €100,000.

Where, pursuant to preferred option A5, an **EU-wide standard formulation of minimum rights** set out in an Annex to the Directive would have to be drafted, such drafting would be effected by the European Commission as part of the legislative process of adopting the Directive.

Member States individually would have to include in their Letters of Rights those procedural rights enshrined in national legislation which go further than the EU-wide minimum rights. Thus, Member States would incur drafting costs in relation to these rights. These costs would be much lower than the one predicted above in relation to the drafting of an exclusively country-specific Letter of Rights. It is expected that the inclusion of

further national procedural rights in a Letter of Rights containing the EU-wide standard formulation of minimum rights would require the work of maximum 5 persons for 2.5 working days. Therefore, the **costs of including further national rights per Member State** would be:

Min: €400 x 5 persons x 2.5 days = €5,000

Max: €4,000 x 5 persons x 2.5 days = €50,000

(2) Translation:

On top of drafting costs, Member States would incur translation costs both under option A4 and A5. For option A4, Member States would have to translate their respective national Letters of Rights into an adequate number of languages themselves. Under option A5, the European Commission would provide the translation into the 23 official Member States languages for the EU-wide standard formulation of minimum rights in the course of the legislative process leading to the adoption of the Directive. Member States would thus only have to bear the costs of translating the mandatory standard formulation into languages other than the 23 official languages of Member States.

The cost of translation differs widely between Member States as well. It also varies depending on the unit used to measures this cost. Examples of the cost of translation across the EU are set out below:

- Austria: the law establishes that the translation of 1 page costs € 15.20 (1000 characters, spaces not counted) plus €2 for writing, and €3.20 per document certification fee

- Spain: 0,07-0,09 (word) or 0,79-1,20 (line)

- Finland: €50 - €80 per page

- Germany: Non technical texts - 1,25 € per line; Difficult technical texts or with problems of readability - 1,85 €; Extremely difficult texts - 4 €

The costs of translating a page vary from €8.50 to €50 across the EU on average. This reflects the country-specific examples provided above. Therefore, the cost of translating a one page document in the 23 official European languages is:

Min: €8.50 x 23 languages = €195.50

Max: €50 x 23 languages = €1,150

The new German Letter of Rights has been translated in 46 languages. Therefore, considering this and also considering that the length of current member States Letters of Rights varies between 1 and 7 pages, the cost of translating an exclusively country-specific Letter of Rights into 46 languages would range between €391 and €16,100. However, where Member States would have to provide translation for Therefore, considering that the mandatory EU-wide standard formulation of minimum rights would take up around 3 to 5 pages, the cost of translating this EU-wide standard formulation into 23 extra (non-EU official) languages would range between **€585 and €5,750**. This cost is likely to be incurred only once, if the Member States agree to cooperate in this translation exercise and pool resources.

Member States to incur the costs for **translating further national procedural rights** going beyond the mandatory minimum rights as these will have to included in a Member State's Letter of Rights alongside the mandatory EU-wide minimum rights. It is expected that information on such additional rights would take one to two pages. Translation of these one or two pages in 46 languages is likely to cost each Member State between **€391 and €4,600**.

(3) Training of police officers, prosecutors and judges:

Generally, training on the provision of information to accused and suspected persons is likely to be part of the normal recurring police training. Where additional training needs to be provided training costs are incurred which primarily results from costs for training staff. In Germany, persons providing training (be they external legal experts or judges/prosecutors/civil servants providing the training outside their working time) would receive between **€20 and €75 per hour of training**. In this framework, it is assumed that each training package would involve 15 police officers for **2 hours** maximum in Member States that do not have the letter of rights.

The need of training police officers and judges depends on whether a LR has already been introduced. In the table below, the countries with the star are those with the LR, in which officials would require no formal training. The other Member States, however, would need to update their police officers and judges on the practices to be used, if the LR and the new legislation were introduced. Below we present figures about the cost of training of police officers in these Member States, based on the data and the assumptions discussed above. These estimates are based on the assumption that the training would be face to face; the provision of this training through e-learning or in smaller modules within the police stations could reduce the costs by a large amount.

Table 1 Training cost of police officers (about the provision of information about the rights)

	Training cost (per hour)		Cost of training package (2h in countries with no LR)		Police officers	Total cost of training	
	Min	Max	Min	Max		Min	Max
AT*							
BE	€ 20	€ 75	€ 40	€ 150	38718	€ 103,248	€ 387,180
BG	€ 20	€ 75	€ 40	€ 150	n/a	n/a	n/a
CY	€ 20	€ 75	€ 40	€ 150	5139	€ 13,704	€ 51,390
CZ*							
DK	€ 20	€ 75	€ 40	€ 150	10620	€ 28,320	€ 106,200
EE	€ 20	€ 75	€ 40	€ 150	3247	€ 8,659	€ 32,470
FI	€ 20	€ 75	€ 40	€ 150	8156	€ 21,749	€ 81,560
FR	€ 20	€ 75	€ 40	€ 150	238478	€ 635,941	€ 2,384,780
DE*							
HL	€ 20	€ 75	€ 40	€ 150	51152	€ 136,405	€ 511,520
HU	€ 20	€ 75	€ 40	€ 150	26334	€ 70,224	€ 263,340
IE							
IT*							
LV*							
LT	€ 20	€ 75	€ 40	€ 150	11173	€ 29,795	€ 111,730

	Training cost (per hour)		Cost of training package (2h in countries with no LR)		Police officers	Total cost of training	
	Min	Max	Min	Max		Min	Max
LU*							
MT	€ 20	€ 75	€ 40	€ 150	1933	€ 5,155	€ 19,330
NL	€ 20	€ 75	€ 40	€ 150	35923	€ 95,795	€ 359,230
PL*							
PT	€ 20	€ 75	€ 40	€ 150	51779	€ 138,077	€ 517,790
RO	€ 20	€ 75	€ 40	€ 150	45391	€ 121,043	€ 453,910
SK*							
SI	€ 20	€ 75	€ 40	€ 150	7971	€ 21,256	€ 79,710
ES*							
SE*							
E&W*							
EU 27					1472300	€ 1,429,371	€ 5,360,140

*countries with Letter of Rights for which we have assumed there is no need of training

Equally, prosecutors and criminal court judges in Member States not yet using Letters of Rights may receive formal training on the Directive and its effects. Hourly rates for training are likely to be largely identical to training costs for police office set out above. It is assumed that judges would be trained for 2 hours, in countries that do not have the letter of rights, in groups of 15:

Table 2 Training cost of criminal judges and prosecutors (about information about the rights)

	Cost of training (per hour)		Cost of training package (2h in countries with no LR, 15 judges)		Number of criminal judges and prosecutors	Total cost of judges training	
	Min	Max	Min	Max		Min	Max
AT*							
BE	€ 20.00	€ 75.00	€ 40.00	€ 150.00	1574	€ 4,196	€ 15,735
BG	€ 20.00	€ 75.00	€ 40.00	€ 150.00	2469	€ 6,583	€ 24,685
CY	€ 20.00	€ 75.00	€ 40.00	€ 150.00	158	€ 421	€ 1,580
CZ*							
DK	€ 20.00	€ 75.00	€ 40.00	€ 150.00	740	€ 1,972	€ 7,395

EE	€ 20.00	€ 75.00	€ 40.00	€ 150.00	311	€ 828 € 3,105
FI	€ 20.00	€ 75.00	€ 40.00	€ 150.00	765	€ 2,039 € 7,645
FR	€ 20.00	€ 75.00	€ 40.00	€ 150.00	5600	€ 14,933 € 56,000
DE*						
HL	€ 20.00	€ 75.00	€ 40.00	€ 150.00	2109	€ 5,623 € 21,085
HU	€ 20.00	€ 75.00	€ 40.00	€ 150.00	3162	€ 8,432 € 31,620
IE						
IT*						
LV*						
LT	€ 20.00	€ 75.00	€ 40.00	€ 150.00	1220	€ 3,253 € 12,200
LU*						
MT	€ 20.00	€ 75.00	€ 40.00	€ 150.00	23	€ 61 € 230
NL	€ 20.00	€ 75.00	€ 40.00	€ 150.00	1711	€ 4,563 € 17,110
PL*						
PT	€ 20.00	€ 75.00	€ 40.00	€ 150.00	2241	€ 5,976 € 22,410
RO	€ 20.00	€ 75.00	€ 40.00	€ 150.00	4984	€ 13,291 € 49,840
SK*						
SI	€ 20.00	€ 75.00	€ 40.00	€ 150.00	681	€ 1,816 € 6,810
ES*						
SE*						
E&W*						
EU 27					74834	€ 73,987 € 277,450

*countries with Letter of Rights for which we have assumed there is no need of training

In conclusion, the overall cost of training police officers and criminal judges and prosecutors, in the Member States that have not introduced the Letter of Rights yet, would range **between €5,200 and 20,000 (in Malta) and 650,000 and €2.4 million (in France),** if we consider the different cost of training and the different number of police officers, judges and prosecutors across Member States.

2. Operational costs

(1) Costs of oral explanation of the rights

The oral provision of information about the rights and about the charges requires more time than the simple distribution of the Letter of Rights to the accused and suspected person. It is estimated that police officers spend **10 minutes explaining to a national** accused person its rights, and **20 minutes to a non-national**, considering that this requires the help of an interpreter.

On the base of the hourly gross salaries of police officers, a model calculation of the range of costs of the oral provision of information was prepared. In this context it will have to be borne in mind that the hourly wage of a police officer varies widely across Europe; the model calculation is based on the following salary figures:

- In the North Rhine-Westphalia *Land* of Germany, a police officer's monthly salary ranges between €2,785 and €3,554 with a notional hourly salary ranging between €15 and €20[83].
- In the UK, the maximum annual wage of a constable is £36,519 (€41,000)[84] and the maximum annual wage of a sergeant is £41,040 (€46,000); hourly wages thus range between €22 and €25.
- In Italy, salaries of National Police officers range between €16,894 and €25,029 annually; implying an approximate hourly salary range of between €8 and €15

Therefore, for the model calculation of the costs of the oral provision of information a notional hourly salary range of between **€8 (min) and €25 (max)** was used. In the calculation a distinction is also being made between the oral provision of information about their rights to nationals (who are assumed to understand the language of proceedings) and to non-nationals (who are assumed not to understand the language of proceedings); **the cost of provision of information to non-nationals includes also the interpretation cost**. It is estimated that it would take an interpreter **20 minutes** to translate the information about the rights.

The model calculation covers only those member States which do not already use Letters of Rights to notify suspects and accused persons of their rights.

According to this estimates, the overall cost of oral explanation of the rights (including both explanation to national and non-nationals, see table below) ranges between **€5,000 and 30,000 (in Cyprus) and €1.9 million and 4.6 million (in France).**

83 Hourly wage in North Rhine-Westphalia, http://www.polizei-nrw.de/beruf/berufsangebot/Besoldung

84 http://www.police-information.co.uk/policepay.htm#constables

Table 3 Oral explanation of the rights

	Criminal proceedings (2008)	Criminal Proceedings involving non-nationals (2008)_	Cost of Interpretation (per hour)		Hourly wage of police officers		Cost of oral provision of information to nationals		Cost of oral provision of information to non-nationals	
			Min	Max	Min	Max	Min	Max	Min	Max
AT*										
BE	51127	21933	€ 3.75	€ 55.00	€ 8.00	€ 25.00	€ 38,925	€ 121,640	€ 85,906	€ 584,893
BG	38313	728	€ 5.90	€ 5.90	€ 8.00	€ 25.00	€ 50,113	€ 156,604	€ 3,373	€ 7,498
CY	1903	1012	€ 3.75	€ 55.00	€ 8.00	€ 25.00	€ 1,187	€ 3,711	€ 3,965	€ 26,997
CZ*										
DK	73078	13154	€ 3.75	€ 55.00	€ 8.00	€ 25.00	€ 79,899	€ 249,683	€ 51,520	€ 350,774
EE	50977	20850	€ 3.75	€ 55.00	€ 8.00	€ 25.00	€ 40,170	€ 125,531	€ 81,661	€ 555,989
FI	113462	9417	€ 80.00	€ 100.00	€ 8.00	€ 25.00	€ 138,726	€ 433,520	€ 276,243	€ 392,390
FR	744832	144497	€ 15.00	€ 20.00	€ 8.00	€ 25.00	€ 800,446	€ 2,501,394	€ 1,107,813	€ 2,167,461
DE*										
HL	240042	19395	€ 3.75	€ 55.00	€ 8.00	€ 25.00	€ 294,195	€ 919,361	€ 75,965	€ 517,210
HU	408407	15111	€ 3.75	€ 55.00	€ 8.00	€ 25.00	€ 524,395	€ 1,638,733	€ 59,185	€ 402,962
IE	94215	13473	€ 3.75	€ 55.00	€ 8.00	€ 25.00	€ 107,656	€ 336,426	€ 52,768	€ 359,273
IT*										

	Criminal proceedings (2008)	Criminal Proceedings involving non-nationals (2008)_	Cost of Interpretation (per hour)		Hourly wage of police officers		Cost of oral provision of information to nationals		Cost of oral provision of information to non-nationals	
			Min	Max	Min	Max	Min	Max	Min	Max
LV*										
LT	72060	721	€ 3.75	€ 55.00	€ 8.00	€ 25.00	€ 95,120	€ 297,249	€ 2,822	€ 19,216
LU*	10356	7601	€ 43.50	€ 43.50	€ 8.00	€ 25.00	€ 3,673	€ 11,478	€ 130,492	€ 173,567
MT	8783	331	€ 3.75	€ 55.00	€ 8.00	€ 25.00	€ 11,269	€ 35,215	€ 1,297	€ 8,830
NL	127400	37073	€ 20.23	€ 46.29	€ 8.00	€ 25.00	€ 120,435	€ 376,361	€ 348,861	€ 880,988
PL*										
PT	431919	88543	€ 3.75	€ 55.00	€ 8.00	€ 25.00	€ 457,834	€ 1,430,732	€ 346,795	€ 2,361,157
RO	460842	3687	€ 3.75	€ 55.00	€ 8.00	€ 25.00	€ 609,540	€ 1,904,814	€ 14,440	€ 98,313
SK*	104758	2095	€ 3.75	€ 55.00	€ 8.00	€ 25.00			€ 1,309	€ 19,206
SI	15329	1610	€ 3.75	€ 55.00	€ 8.00	€ 25.00	€ 18,293	€ 57,164	€ 6,304	€ 42,921
ES*										
SE*										
E&W										
EU 27	8174698	1662210	€ 3.75	€ 55.00	€ 8.00	€ 25.00	€ 3,391,877	€ 27,135,369	€ 6,776,432	€ 17,335,990

B. Model calculations for the provision of information on the case by means of granting access to the case-file (option B3)

1. One-off costs

(1) Training of police officers, prosecutors and judges:

In the case in which legislation is passed on the provision of information about the access to file, police officers, prosecutors and judges in those Member States that do not provide currently provide this right (Estonia, France, , Spain), would have to be trained. The training cost per hour is likely to be the same as predicted above (Annex V, A.1.(3)). It is assumed that the training would take 2 hours and it would be delivered to group of 15 officials:

Table 4 Training cost of police officers (about provision of access to the case-file)

	Training cost (per hour)		Cost of training package (2h , 15 police officers)		Number of police officers	Total cost of police officers training	
	Min	Max	Min	Max		Min	Max
EE	€ 20.00	€ 75.00	€ 40.00	€ 150.00	3247	€ 8,659	€ 32,470
FR	€ 20.00	€ 75.00	€ 40.00	€ 150.00	238478	€ 635,941	€ 2,384,780
ES	€ 20.00	€ 75.00	€ 40.00	€ 150.00	214935	€ 573,160	€ 2,149,350
EU 27	€ 20.00	€ 75.00	€ 40.00	€ 150.00	456660	€ 1,217,760	€ 4,566,600

Table 5 Training cost of prosecutors and judges (about provision of access to the case-file)

	Training cost (per hour)		Cost of training package (2h, 15 judges)		Number of criminal judges and prosecutors	Total cost of judges' and prosecutors' training	
	Min	Max	Min	Max		Min	Max
EE	€ 20.00	€ 75.00	€ 40.00	€ 150.00	311	€ 828.00	€ 3,105.00

	Training cost (per hour)		Cost of training package (2h, 15 judges)		Number of criminal judges and prosecutors	Total cost of judges' and prosecutors' training	
	Min	Max	Min	Max		Min	Max
FR	€ 20.00	€ 75.00	€ 40.00	€ 150.00	5600	€ 14,933.33	€ 56,000.00
ES	€ 20.00	€ 75.00	€ 40.00	€ 150.00	4193	€ 11,180.00	€ 41,925.00
EU 27	€ 20.00	€ 75.00	€ 40.00	€ 150.00	10103	€ 26,941.33	€ 101,030.00

Overall, the cost of training police officers and judges and prosecutors, about right to access to the file, ranges between **€9,500 and 35,600 in Estonia and €651,000 and 2.1 million in France**.

2. Operational costs

For calculating the overall operation costs it is assumed that a judge or a prosecutor would have to decide whether the accused person or its lawyer should be granted access to the case-file; this would, on average, require not more than 15 minutes of the judge's or prosecutor's time for each criminal proceeding. Clerical staff would then need to arrange actual access to the file to the accused or to its lawyer; this is likely to take no more than 30 minutes on average for every criminal case.

Table 6 Provision of access to the file

	Criminal judges salary (per hour)[85]		Clerical staff salary (per hour)		Cost of criminal judges (15 minutes)		Cost of clerical staff (30 minutes)		Criminal proceedings	Total cost of provision of access to file	
	Min	Max	Min	Max	Min	Max	Min	Max		Min	Max
EE*	€ 11.76	€ 16.15	€ 5.00	€ 15.00	€ 2.94	€ 4.04	€ 2.50	€ 7.50	50977	€ 277,332.26	€ 588,184.55
FR*	€ 16.94	€ 49.87	€ 5.00	€ 15.00	€ 4.23	€ 12.47	€ 2.50	€ 7.50	744832	€ 5,016,413.54	€ 14,871,648.28
ES*	€ 21.42	€ 54.69	€ 5.00	€ 15.00	€ 5.35	€ 13.67	€ 2.50	€ 7.50	995064	€ 7,815,218.29	€ 21,067,107.96
EU 27	€ 16.71	€ 40.24	€ 5.00	€ 15.00	€ 4.18	€ 10.06	€ 2.50	€ 7.50	1790873	€ 13,108,964.09	€ 32,049,758.29

[85] From CEPEJ Evaluation of Judicial system report, 3rd report - edition 2008, in each of the four member states, http://www.coe.int/t/dghl/cooperation/cepej/evaluation/default_en.asp ; data report on the gross salary of first instance (min) and supreme court (max) judges; it does not however distinguish between criminal and civil judges

Annex VI

Report of the Interservice Steering Group

15 March 2010

ISG was attended by DG COMP, DG MARKT, DG RELEX, DG ELARG, DGT and OLAF (apologies from SCIC). Within JLS, A1, D1 and D2 were represented.

The Legal Service and the Sec Gen did not attend but their views were canvassed bilaterally afterwards and are included in this report.

The meeting was positive in that colleagues present agreed that there was a need for this measure.

Participants (DGT/DG ELARG) were interested in how Measure B fits together with Measure A. They had heard about the concurrent proposals on Measure A and wanted to be briefed on that

The following **comments** were made:

- third country nationals could be told via the Letter of Rights that there is a risk of expulsion if they are found guilty of a criminal offence (JLS D2);

- the text should be developed to show why there is need to cover domestic procedures as well as cross border ones since al the examples of case studies relate to cross border cases (DG COMP);

- a table is needed to show all the options, plus pros and cons (JLS D2);

- what would the implications be in terms of the need for more translators, more interpreters and more training for those professionals? Could the EU budget be used for any of this? Training via the European Masters? (DGT);

- this could be quite expensive for some of the newer MS (DG ELARG);

- this would be very helpful for judges to know that procedures are followed correctly (END, judge from Slovakia from OLAF). Support for the "preferred option".

Advice from A1:

1) Need more costings from the contractors, Matrix, to answer the questions "Where is the impact going to be felt and to what extent?".

I) Baseline scenario needs to take into account the implementation of Measure A (i.e. the position when MS have better translation and interpretation facilities in place).

3) Matrix have provided a lot of information but it is rather random - some is useful some is not. More time is need to sift the information and to set out what is useful (Matrix cannot be criticised because the timeframe meant that they were required to put forward a lot of information).

4) Need to distinguish between enforceability and verification.

5) Add a section on the "preferred option" - this is not strictly necessary, but since we have one here, and can defend it, better to clarify.

Comments from the Sec Gen

The main issue is the very limited amount of economic data to quantify the impact of the proposal and to compare the options on this basis. The Impact Assessment Board (IAB) is insists on that. Sec Gen suggests looking at what was done for "Measure A" and at the IAB's opinion. Also need to estimate the savings that can be achieved, both in terms of costs and administrative burden, by having a Letter of Rights and also by saving on costs of appeals on the ground that insufficient information was provided to the suspect or defendant.

Comments from the Legal Service

The Legal Service comments centred on the contents of the preferred options (binding character of a directive, minimum rights to be included when granting access to the file)..

Additional comments and information from OLAF

No figures and/or statistics available but a seconded national expert in OLAF (judge from Slovakia) has the following comments:

1. In the EJN criminal law section meetings it happens often, that colleagues complain about the lack of mutual trust: e. g. the implementation of the EAW or a possible creation of a JIT (joint investigation team).

The EJN Internet Forum created by the Spanish presidency could be sounded out (and used as a base for disseminating information) and also the Secretariat of the EJN could facilitate to receive more concrete and structured information.

2. Lack of trust affected two big cases which OLAF transmitted for coordination to EUROJUST on the bases of Art. 26 (3), (4) of the EUROJUST Decision 2002: one bilateral case in the field of direct expenditures - Europe Aid (FR, GR) and one multilateral case in the field of customs – VAT fraud concerning goods of Chinese origin (HU, AU, SK, FR, IT). In both cases, lack on mutual trust was clear and affected the openness to exchange information with investigative and judicial authorities of the other MS.

ANNEX VII – Potential monitoring and evaluation indicators

Main policy objectives		**Potential indicators for preferred option**	**Sources of information**
To facilitate execution and enforcement of judicial decisions in criminal matters across the EU by ensuring that suspected or accused persons in the EU receive sufficient information <u>on their rights and the case against them</u>		• Number of refusals by Member State judicial authorities to execute another Member States' judicial decision on fair trial grounds • Number of cases (accompanied by summary explanation) in which time-frames for the enforcement of another membr States' judicial decision as envisaged in EU legislation on judicial cooperation has been exceeded. • Member States' judges impression of compliance with fair trial standards of proceedings in other Member States	Member States' governments <u>also: Eurojust</u> Judges' associations (e.g. European Network of Councils for the Judiciary)
To ensure that suspects or accused persons in the EU receive sufficient information <u>on their rights</u>, preferably in writing, for them to exercise their rights to a fair trial		• Legislation passed by Member State to implement Directive by providing for ▪ an unambiguous duty to inform suspects of their rights by means of a Letter of Rights ▪ an adequate means for verification of sufficient provision of information ▪ adequate remedies for failure to be informed sufficiently of rights • Number of successful and unsuccessful applications to the ECtHR where lack of information on rights is alleged • Number of successful appeals against a final judgment or pre-trial decision on ground of failure to provide information on rights	Member States' governments <u>also</u>: Judges' associations (e.g. European Network of Councils for the Judiciary)
Information provided to suspects or accused persons on their fair trial rights should:	• be in clear language which will be easily understood by the suspect or accused person	• Availability of Letters of Rights ▪ in accessible language ▪ in a suitable range of foreign languages ▪ in a version for minors and persons with learning disabilities • Number of informal complaints in relation to insufficiently comprehensible Letters of Rights or lack of interpretation of additional oral explanation of the rights	Member States' governments, verification by foreigners' support groups and childrens' rights organisations (e.g. by use of 'user panels') Lawyers' associations (e.g. Council of Bars and Law Societies of Europe) and foreigners/children's groups
	• be provided at or before first contact with the police	• Number of Letters of Rights handed out to suspects and accused persons in comparison to overall number of criminal proceedings	Member States' governments (e.g. national statistics agencies)

		• Availability of suitable guidance and/or training for police officers on how best to inform suspects and accused persons of their rights	
	• include core rights under the ECHR and the CFREU which are applicable on arrest, first interrogation and during detention	• Availability of suitable guidance and/or training for police officers on how best to inform suspects and accused persons of their rights • Experience of defence lawyers in relation to adequate provision of information on rights in day-to-day practice	Member States' governments Lawyers' associations (e.g. Council of Bars and Law Societies of Europe)
	• be relevant, practical and effective	Availability of specific guidance for police officers, prosecutors and judges on the provision of <u>additional</u> oral explanation of rights (particularly where suspects do not speak the language of proceedings, are minors or show signs of having learning disabilities)	Member States' governments
	• be provided in such a way that it is possible to verify that the information has been transmitted	Experience of defence lawyers and judges with the sufficiency of verification mechanisms in place	Lawyers' and judges' associations (e.g. Council of Bars and Law Societies of Europe; European Network of Councils for the Judiciary)
To ensure that accused persons in the EU receive sufficiently detailed information <u>on the case against them</u> in order to enable them adequately to prepare their defence or challenge pre-trial decisions		• Legislation passed by Member State to implement Directive by providing for ▪ a duty to inform suspects of the case against them by granting access to the case-file or, where access is exceptionally refused, by other suitable means ▪ an adequate means for verification of sufficient provision of information ▪ adequate remedies for failure to be informed sufficiently of the case • <u>Number of instances where access to the case-file was exceptionally refused or limited so not as to hamper ongoing investigations</u> • Number of successful and unsuccessful applications to the ECtHR where lack of information on the case is alleged • Number of successful appeals against a final judgment or pre-trial decision on ground of failure to provide information on rights	Member States' governments <u>also</u>: Judges' associations (e.g. European Network of Councils for the Judiciary)
Information provided to suspects or accused persons on the case against them should:	• be sufficiently detailed to allow adequate preparation of the defence case or challenge of pre-trial decisions	Experience of defence lawyers and judges in relation to adequate provision of information on rights in day-to-day practice	Lawyers' and judges' associations (e.g. Council of Bars and Law Societies of Europe; European Network of Councils for the Judiciary)
	• be provided in a	• Provision of adequate guidance and/or training of	Member States'

	timely fashion and in such a way that the suspect or accused person understands the case against him	officials, prosecutors and judges ▪ on instances in which refusal of access to the case-file would be justified and on alternative means to provide information in these cases ▪ on best ensuring that people who do not understand the language of proceedings receive adequate translation of key documents on the basis of the Directive on the right to translation and interpretation in criminal proceedings • Number of informal complaints in relation to insufficient access to the case-file	governments Lawyers' associations (e.g. Council of Bars and Law Societies of Europe) and foreigners/children's groups
	• be provided in such a way that it is possible to verify that the information has been transmitted	Experience of defence lawyers and judges in relation to adequate robustness of verification mechanisms in place	Lawyers' and judges' associations (e.g. Council of Bars and Law Societies of Europe; European Network of Councils for the Judiciary)