



**EUROPEAN COMMISSION**

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## **Welcome and key note address**

*Check Against Delivery*  
*Seul le texte prononcé fait foi*  
*Es gilt das gesprochene Wort*

**Ensuring cross-border justice for all in the EU: sharing practices and experiences from the ground – Primate's Palace, Bratislava**

Bratislava, 9-10 November 2016

**SPEECH/XX**

Spokespersons'  
Service  
Service des  
Porte-parole

Ladies and gentlemen,

First of all, I would like to thank the Slovak Presidency for this timely conference!

I am very grateful to join you as it is an excellent chance to discuss the important issues of **mutual recognition in criminal matters and procedural rights**.

**[Political context]**

**Mutual recognition is the cornerstone of judicial cooperation.**

Member States should recognise judicial decisions taken in other Member States so that they can be enforced in any country of the EU. But, a lack of mutual trust between authorities of EU countries can affect mutual recognition of judgments and judicial decisions in the Union.

It is a delicate balance, and the mere perception that the rights of suspects and accused persons are not always respected can harm mutual trust and, in turn, judicial cooperation. We need to be aware of that.

The European Commission proposed a package of six Directives which are now adopted and which give greater safeguards to EU citizens in criminal proceedings. Each one deals with distinct procedural rights or a set of rights of suspects or accused persons.

Let me run through the rules in question and update you on where we stand.

**[Six Directives which are already adopted]**

The first two directives to be adopted were the rules on **the right to interpretation and translation<sup>1</sup>** and on **the right to information<sup>2</sup>**.

These rules are already applied. And this means that judicial authorities must inform all suspects and accused persons in the EU of their procedural rights and of the charges and accusation against them. And they shall also have the right of access to the file, in due time, to prepare their defence.

If they do not understand or speak the language of the criminal proceedings, the authorities shall provide them with interpretation and translation.

With regards to the **Directive on the right of access to a lawyer and the right to communicate upon arrest<sup>3</sup>**, which was adopted in 2013, Member States must implement the rules on 27 November this month. These rules guarantee the core defence right of access to a lawyer from

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<sup>1</sup> Directive 2010/64/EU on the right to interpretation and translation in criminal proceedings (in application since 27 October 2013).

<sup>2</sup> Directive 2012/13/EU on the right to information in criminal proceedings (in application since 2 June 2014).

<sup>3</sup> Directive 2013/48/EU on the right of access to a lawyer in criminal proceedings and in European arrest warrant proceedings, and on the right to have a third party informed upon deprivation of liberty and to communicate with third persons and with consular authorities while deprived of liberty (to be transposed before 27 Nov. 2016).

the first stage of police questioning and throughout criminal proceedings. It will also ensure that the suspect can communicate with the family or consular authorities if so wished.

We hope for **further major achievements in 2016**. I refer to the **Directives:**

- **on the strengthening of certain aspects of the presumption of innocence;**
- **on procedural safeguards for children;**
- **and on legal aid.**

The **directive on the presumption of innocence**<sup>4</sup> is an important text for European citizens as it sets out common standards for the protection of the presumption of innocence, a basic principle in our criminal justice systems, and the right to be present at the trial.

The **directive on procedural safeguards for children**<sup>5</sup> will improve by far the European standards for procedural rights of children who face criminal justice. It also gives a strong political signal that the EU cares about the most vulnerable persons involved in criminal proceedings and their re-integration into society.

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<sup>4</sup> Directive 2016/343 on the strengthening of certain aspects of the presumption of innocence and the right to be present at one's trial (to be transposed by 1 April 2018).

<sup>5</sup> Directive (EU) 2016/800 on procedural safeguards for children who are suspects and accused in criminal proceedings (to be transposed by 11 June 2019).

The **directive on legal aid**<sup>6</sup> makes sure that the right of access to a lawyer is an effective right also for those who cannot afford a lawyer. This is particularly important following the arrest of suspects, who may feel stressed when the police question them.

### **[The challenges ahead]**

We have seen a big **change in criminal law in the last few years**. People are **more aware** of EU law on rights to a fair trial in criminal proceedings, which contributes to the creation of a **true single area of EU justice**.

**And criminal procedural law is no longer viewed as a purely domestic domain.**

Since a number of years the importance of jurisprudence by the **European Court of Human Rights** has grown. And – more recently – first jurisprudence by the **Court of Justice of the European Union** on the interpretation of these directives has begun to evolve.

But there are **many challenges ahead**:

### **[Implementation of the Directives]**

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<sup>6</sup> Directive (EU) 2016/1919 on legal aid for suspects and accused persons in criminal proceedings and for requested persons in European arrest warrant proceedings (to be transposed by 25 May 2019).

Firstly, **the Member States must implement and apply the EU Directives.** We cannot allow these valuable pieces of legislation to **stay dead letters of law.** We must ensure that **the system will work.** This means that all EU Member States must adopt the required national implementing legislation and adopt it in an appropriate manner.

The **Commission plays an important role in this.** We not only monitor the correct implementation of the Directives, but also offer support and assistance.

**The two reports of the Fundamental Rights Agency,** which we will have a chance to discuss at the conference, are **very timely.** **They give an excellent overview** of the state of play of the fundamental rights aspects of the implementation of the EU Framework Decisions in the field of detention, as well as the Directives on the right to interpretation and translation and on the right to information.

The reports show that there is still a **lot to do in this area** - for the Member States and the institutions. But they provide a good basis from which to work in our search for possible avenues for future action in these fields.

#### **[Obstacles caused by poor detention conditions]**

**Secondly, issues related to detention continue to provoke controversy.**

Member States are mainly responsible for detention conditions. But, in a number of EU countries prison conditions are below the standards set by the Council of Europe. And the European Court of Human Rights in Strasbourg, **concerned by these issues**, has condemned some of these countries.

There is also evidence that poor detention conditions in Member States create **obstacles to mutual recognition instruments in the EU**, such as the European arrest warrant (EAW) and the EU Framework Decision on the Transfer of Prisoners.

In April of this year, the European Court of Justice (ECJ) ruled, in the *Aranyosi/Caldararu* case, that a Member State must defer the execution of a European Arrest Warrant if the detention conditions in the country that issued the warrant pose a real risk of inhuman or degrading treatment.

This is an important judgment as it may require Member States to provide assurances on the prison facilities where they will hold the surrendered person.

It also means that Member States can no longer turn a blind eye to detention conditions in other Member States. Instead, they need to consider fundamental rights if the European Court for Human Rights has condemned a Member State for overcrowding or poor detention conditions.

Furthermore, the European Convention of Human Rights and the EU Charter of Fundamental Rights also state that a country cannot transfer people to another country if that would imply inhuman or degrading treatment. Judges have to face this dilemma when they extradite people.

**Also**, improving prison conditions has become a political priority due to the danger of **radicalisation in prisons**. Terrorist attacks are increasingly linked to radicalisation in prisons.

But, if managed and resourced properly, prisons can play a positive role in tackling and preventing radicalisation and terrorism.

Let me come now to another topic - **pre-trial detention**. In some Member States, pre-trial detainees account for half of the prison population (compared to the EU average of 21%). This, in turn, makes overcrowding and poor detention conditions worse.

But, **alternatives to pre-trial are not often used or even do not exist**. Such alternatives should be carefully considered since those who are kept in pre-trial detention are presumed innocent.

There is also an element of **discrimination of EU citizens**. We have observed that suspects who are residents might benefit from alternative measures. But, despite similar circumstances, suspects who are non-residents are more likely to be kept in pre-trial detention because of the fear that they will abscond to their home country.

This can **harm the mutual trust** between Member States!

**The European Parliament has highlighted the issue of Pre-trial detention.** And so the Commission has begun to consider the need for minimum standards.

### **[Confiscation]**

Let me briefly turn to another topic: the **freezing and confiscation of criminal assets**. We need to make mutual recognition of freezing and confiscation orders in the European Union work better in order to become more efficient in combatting crime, organised crime and terrorist financing.

The two current instruments in this field – one from 2003, one from 2006 - are not up to the challenges of criminals hiding their assets in other EU countries:

- they do not cover many forms of confiscation that now exist in a lot of Member States, including non-conviction based confiscation, third-party confiscation and extended confiscation;
- the certificates are too complicated and the procedures not always efficient;
- they do not address victims' needs to get compensation for damages from the State from the confiscated property, or to get

stolen assets returned; this possibility exists in several Member States but not in cross border cases.

The Commission is working on a new proposal to strengthen the mutual recognition of freezing and confiscation orders to address these gaps. At the same time, the proposal will contain sufficient safeguards to protect the rights of all persons affected. We can build mutual trust and ensure that mutual recognition works only by securing a high standard.

### **[E-Justice: better information brings better justice]**

To complement EU law, the Commission is also working to improve the efficiency of justice through better use of electronic communication and resources.

The e-Justice Portal, developed by the Commission and available online since 2010, aims to provide a one-stop-shop for justice matters in the EU.

With more than 30.000 pages of content, the portal provides a wealth of information and links on laws and practices in all EU countries. The resources range from information on legal aid and European small claims for citizens to information on training and legal search engines such as the **European Case Law Identifier** for legal practitioners!

But the e-Justice Portal is more than a large collection of justice related information. It contains a number of dynamic functions which aim to simplify procedures and improve access to justice across borders.

For example, the Portal provides online forms, which allow citizens and businesses to create documents for small claims or European Payment Orders. Soon, it will be also possible to submit such documents via the Portal to the competent court. And finding the competent court is no problem – the Portal's Court Database takes care of that.

In addition, the Portal provides tools for citizens who have a legal problem in another country to find the right lawyer or notary – someone who speaks a language they understand and has the right qualifications.

Let me also tell you about the most recent addition to the Portal - the **Fundamental Rights Wizard** - which allows users to find the right national body to help them with fundamental rights violations.

We are constantly working on improving the E-justice Portal, its functionalities and layout.

Several forthcoming projects aim at **interconnecting national applications** – for example, the Business Registers Interconnection System (BRIS) - a system for the interconnection of land registers and insolvency registers. Through these systems, users will be able to easily find, for instance, information on cross-border companies, via a multi-lingual access point on the Portal.

## [Conclusion]

Ladies and gentlemen,

We have made **important progress, both in the field of mutual recognition and on procedural rights in the EU.**

**Yet, the implementation and application of these measures in practice face new challenges and they may require new rules to succeed.**

Only by **working together** can we ensure that mutual recognition instruments work smoothly and that EU fair trial rights are a reality. Citizens must be able to trust their rights to a fair trial wherever they may be in the European Union.

And, by fostering **digital solutions** for direct communications between citizens and courts in other Member States, we will improve the **efficiency of justice** and, at the same time, facilitate citizens' **access to justice** across the EU.

I am confident that this Conference will play a part in this important process and so wish you very fruitful discussions.

Thank you.

**Word count: 1960**