



# JUSTICE

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## Fair Trial Rights in the EU

Jodie Blackstock

Senior Legal Office, EU Justice and Home Affairs

# Treaty on the European Union

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*“Without prejudice to the powers of the European Community, the Union’s objective shall be to provide citizens with a high level of safety within an **area of freedom, security and justice by developing common action between the Member States in the fields of police and judicial cooperation in criminal matters and by preventing and combating racism and xenophobia**” Article 29 TEU*



# Judicial Cooperation

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## Conclusions of the European Council, Tampere 1999

The areas where mutual recognition would be effective:

- Abolition of the formal extradition procedure, replaced by a fast track transfer system
- Pre-trial seizure of evidence and assets
- Evidence lawfully obtained in one Member State admissible in other Member States
- Common minimum standards necessary to facilitate the application of MR in accordance with the fundamental principles of the MS (para 35)



# 2000 – 2010 Instruments Under the Hague Programme

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Judicial cooperation in criminal matters:

1. **European arrest warrant** OJ L 190, 18.07.2002, p. 1 – implemented
2. **Freezing of assets** OJ L 196, 02.08.2003, 045 – implemented
3. **Financial penalties** OJ L 076, 22.03.2005, p. 16 - implemented
4. **Exchange of information extracted from the criminal record** OJ L 322, 9.12.2005, p. 33 - implemented
5. **Confiscation orders** OJ L 328, 24.11.2006, p.59 - implemented



# 2000 – 2010 Instruments

## Under the Hague Programme

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- 6. Taking account of convictions,**  
OJ L 220, 15.08.2008, p. 32 - 2010
- 7. Enforcement of custodial sentences,**  
OJ L 327, 5.12.2008, p. 27- 2010
- 8. Supervision of probation decisions and alternative sanctions** OJ L 337, 16.12.2008, p. 102 – 2010
- 9. European evidence warrant**  
OJ L 350, 30.12.2008, p. 72 - 2011
- 10. In absentia judgments**  
OJ L 81, 27.03.2009, p. 24 - 2011
- 11. Supervision measures as an alternative to provisional detention** OJ L 294, 11.11.2009, p. 20 - 2012



# European Arrest Warrant

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- Council Framework Decision on the European Arrest Warrant and surrender procedures between Member States of 13th June 2002
- Framework Decisions are binding as to the effect to be achieved but leave the form and content to the Member State – Article 34 TEU
- Implemented in the UK by Part I Extradition Act 2003
- Only instrument to be fully adopted by all member states



# Problems identified by the EAW procedure

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- The political landscape
- Virtually impossible to prevent a return to another member state on an EAW:
- Mutual trust and members of the ECHR
- Protection of defendants & compliance with Art 6 ECHR



# Law in place

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- Art 6 TEU:

*The Union is founded on the principles of liberty, democracy, respect for human rights and fundamental freedoms and the rule of law;*

*The Union shall respect fundamental rights as guaranteed by the ECHR*

## ➡ The Charter on Fundamental Rights

EU citizens can expect equivalent safeguards in criminal proceedings throughout the EU?





# Need for protection at EU level

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Most recent study:

*EU Procedural Rights in Criminal Proceedings,*

T. Spronken and others, European Commission, (Maklu, 2009)

- Questionnaire sent to MoJs of the Member States
- Extent to which four fundamental rights guaranteed in formal legislation
  1. The right to information
  2. The right to legal advice
  3. The right to legal assistance free of charge
  4. The right to translation and interpretation



# The Right to Information

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## Nature and cause of the accusations:

- All accord the right
- 5 MS do not provide a *legal obligation*

## When?

Stages vary throughout, e.g. BE within [...] hours of arrest, EL promptly

## How?

7 – letter of rights

9 – in writing

17 – orally (of which, solely oral CY, DK, EL, IE, IT, LT, SK, SI)



# Information about rights

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Great differences in how MS inform suspects of their rights

- Some in writing
- 10 in a 'letter of rights' (AU, CZ, E&W, IT, LT, LU, PO, LK, ES, SE)
- Content and timing varies massively
  - e.g. BE and FR - no ob. to inform of right to silence



# Polish letter of rights

## 1. The suspect is entitled to:

- provide explanations, refuse to provide explanations or answer questions without giving any reasons for not doing this (art. 175 §1 Code of Criminal Procedure);
- put a motion to perform the actions within the inquiry or investigation, participate at the evidence gathering (art. 315 §1 and 2 CCP as well as art. 317 §1 and 2 and art. 325a §2 CCP). The suspect who is present at the evidence gathering has the right to provide explanations concerning each evidence (art. 175 §2 CCP);
- have a defense counsel (art. 77 and art. 78 CCP);
- demand to be questioned with participation of appointed defense council, whose absence does not stop the hearing (art. 301 CCP).
- use the services of an interpreter free of charge if his command of the Polish language is insufficient (art. 72 §1 CCP);
- apply or agree for application by the injured party regarding submission of the case to the reliable institution or person for the purpose of mediations (art. 23a §1 CCP);
- demand, before he/she is given notice of the date on which he/she can examine the files of the inquiry or investigation, that he should be given an oral presentation of the grounds for charges as well as reasons for them prepared in writing. The reasons for the decision on the charges are served upon the suspect and his/her defence counsel within 14 days (art. 313 §3 and art. 325a §2 CCP);”



# England and Wales Letter of Rights

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The Law Society  
of England and Wales

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.

## 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.

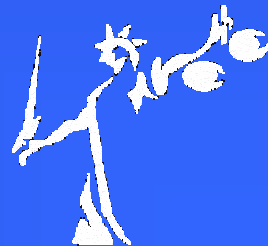
You will find more details about these rights inside



# The Right to Legal Assistance

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- Time, method and amount of access varies considerably
- Right to *contact* lawyer after arrest in all MS
- In 17 MS, immediately. Others varying later stages e.g. BE 24 hours later when taken before investigating judge
- *No consultation before interview* in BE, EL, LV, NL
- *No lawyer present in interview* in BE, FR, IE, SC, NL



# Recording of interviews

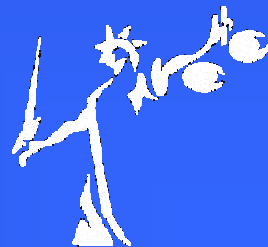
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## Audio recording

- Sometimes – 20
- Never – CY, FR, EL, IE, IT, LU
- Only E & W always audio recording

## Video

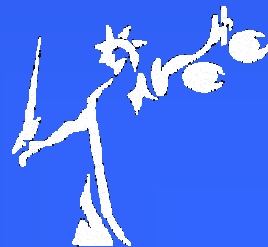
- Always IE
- Never – CY, DE, EL, IT, LU, RO



# Legal Aid

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- All MS provide right to legal assistance (partially) free of charge *except* DE
- Merits test as to whether in interests of justice – 15 MS
- Means test – 20 MS
- Enormous difference in money available:  
€ per inhabitant:  
IE = 13.10; UK = 8.51; FR = 1.60;  
ES = 0.67; RO = 0.16



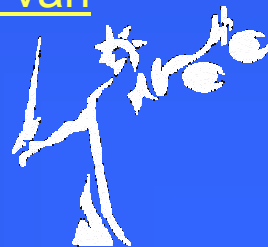


# Interpretation and Translation

- 23 official languages in the EU
- Regional and indigenous languages
- Third country languages of migrants

[Портал на Европейския съюз](#) [Portál Evropské unie](#) [Internetportalen til EU](#) [Das Portal der Europäischen Union](#) [Euroopa Liidu portaal](#) [Η δικτυακή πύλη της Ευρωπαϊκής Ένωσης](#) [Gateway to the European Union](#) [El portal de la Unión Europea](#) [Le portail de l'Union européenne](#) [Tairseach an Aontais Eorpaigh](#) [Il portale dell'Unione europea](#) [Eiropas Savienības portāls](#) [Europos Sąjungos portalas](#) [Az Európai Unió portálja](#) [Il-portal tal-Unjoni Ewropea](#) [De portaalsite van de Europese Unie](#) [Portal Unii Europejskiej](#) [O portal da União Europeia](#) [Portalul Uniunii Europene](#)

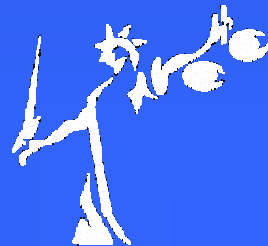
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# Interpretation and Translation

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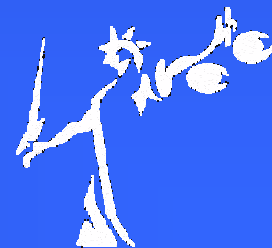
- No written translation – AT, BG, FR, LV, PT
- What? Varies massively
- In all MS an interpreter will be present at police interview and court
- No established procedure to ascertain if interpreter required in *17 MS*
- No interpreter for consultation with lawyer in BE, BG, FR, HU, LV.



# Effective Criminal Defence Rights in the EU

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- How do the rights asserted by the MS above operate in practice?
- JUSTICE, OSJI, University of Maastricht, University of West England
- 3 year project
- 9 countries – E&W, BE, DE, FI, FR, HU, IT, PO, Turkey



# Effective Criminal Defence Rights in the EU

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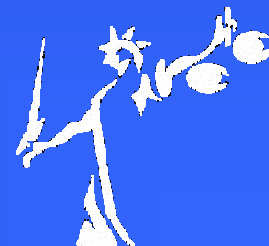
## Right to Information about charge

BE – No right until become a defendant

FI – Must be informed on arrest, but are problems with the provision of adequate information

PO – access to case file is in the discretion of the judge

Turkey – entitled to prompt notice but honoured more in breach



# Effective Criminal Defence Rights in the EU

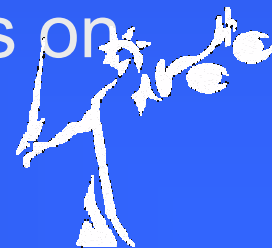
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## Information about Defence Rights

FI – information provided orally. Written notice currently under consideration

DE – common for suspects to be encouraged not to request lawyer

HU – information on right to silence avoided by questioning as a ‘witness’, Notice of rights not provided until indictment, access depends on judge



# Effective Criminal Defence Rights in the EU

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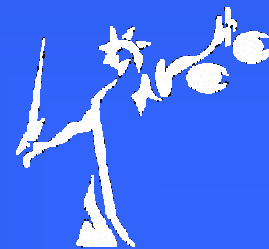
## Right to legal advice

BE – Consideration of extending 24hrs w/o access to lawyer to 48hrs. No minimum quality standards for lawyers and concerns about standards

FI – representative need not be a lawyer.  
Lawyers need not belong to Bar Assoc – ‘wild lawyers’

Turkey – Istanbul Bar boycotting.

Disappointing standards of representation.



# Effective Criminal Defence Rights in the EU

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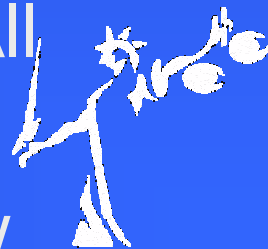
## Interpretation and Translation

BE – 3 hours on legal aid. No regulation of service

HU – Often insufficiently skilled, no formal qualification system. Only decisions and official documents of court translated

IT – assessment by court for need. Must be competent and independent interpreter. All docs (save judgment) must be translated.

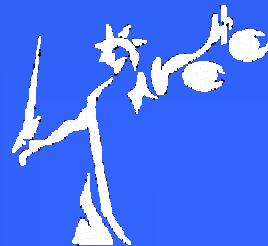
PO – in practice good, but remuneration low



# Approaches to Defence Rights

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- Numerous studies on differences in Member States' provision for defendants.
- JUSTICE and other organisation called for a instrument on defence safeguards in 2002
- European Commission Green Paper in 2003 on protecting certain procedural rights
- Proposal for framework decision 2004
- Stuck in legislative process for three years before being shelved
- 2009 Swedish Presidency put back on agenda



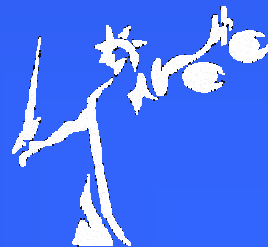


# Swedish Presidency of the EU

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Swedish Presidency produced a Roadmap:

**Resolution of the Council of 30  
November 2009 on a Roadmap for  
strengthening procedural rights of  
suspected or accused persons in  
criminal proceedings, OJ C 295,  
4.12.2009, p. 1**



# Roadmap

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Measure A: Translation and Interpretation

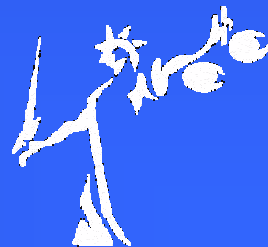
Measure B: Information on Rights and Information about the Charges

Measure C: Legal Advice and Legal Aid

Measure D: Communication with Relatives, Employers and Consular Authorities

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

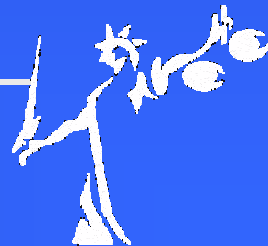
Measure F: A Green Paper on Pre-Trial Detention



# Post Lisbon Treaty

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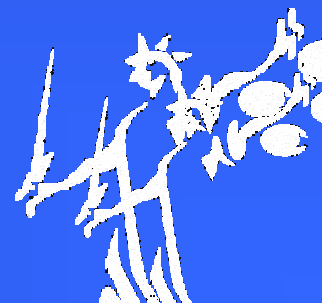
- Defence rights get a mention
- The EU will accede to the ECHR
- The Charter will become binding (but UK has opt out)
- The UK can *opt in* to new Justice measures
- In 5 years all adopted measures will become binding under new procedure — UK can choose not to take part



# Proposal for a Directive on Interpretation and Translation

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- July 2009 Proposal
- Not adopted pre-Lisbon
- December MS Initiative for a Directive
- March Proposal for Directive from the Commission
- Waiting for European Parliament



# The UK and the EU

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- Will an instrument be adopted before the UK election?....
- How will a Conservative Government decide to use the opt ins?...

