
FOLKETINGET



**The European Affairs Committee and the Committee on Health
The EU-Secretariat of the Folketing**

Date: 14 September 2009

**Opinion adopted by the European Affairs Committee and the Legal
Affairs Committee of the Danish Parliament**

**On the Commission's proposal COUNCIL FRAMEWORK DECISION on
the right to interpretation and to translation in criminal proceedings -
COM(2009) 338 final**

At the request of COSAC, the European Affairs Committee and the Legal Affairs Committee of the Danish Parliament have conducted an assessment of whether the "proposal for a Council framework decision on the right to interpretation and to translation in criminal proceedings" complies with the principle of subsidiarity.

The objective of the proposal is to enhance mutual recognition in criminal matters between Member States.

The point of departure is that if the accused cannot understand the language used during the criminal proceedings concerned (including appeal cases), he should have right to the assistance of an interpreter from the time where he is informed that he is suspected of having committed a criminal offence until the conclusion of the proceedings.

The proposal provides in this regard all accused in criminal proceedings with the right to interpretation and translation free of charge and lays down a number of further requirements to the scope and quality of the translation and interpretation provided.

The Commission states in its justification of the proposal's compliance with the principle of subsidiarity that the aim of the proposal - to promote trust

between Member States in criminal proceedings - cannot be sufficiently achieved by Member States alone.

The Commission furthermore states in its impact assessment of the proposal that differences in implementation by Member States of the right to interpretation and translation stemming from national legal orders and obligations under the “European Convention on the protection of Human Rights”, have led to differences in the level of protection provided by each Member State. In some Member States this has also led to speculations as to which standards apply in other Member States.

A majority of the European Affairs Committee and the Legal Affairs Committee, composed of the Liberal Party, the Social Democrats, the Conservatives, the Socialist People’s Party, the Social-Liberal Party, the Red-Green Alliance and the Liberal Alliance, finds that the question of setting out rules regarding the right to interpretation and translation in criminal proceedings has transnational aspects, which cannot be satisfactorily regulated by action by Member States.

Recalling the aim of the proposal, the majority finds that action at Community level would produce clear benefits compared with action at the level of the Member States.

The majority therefore finds the proposal in full compliance with the principle of subsidiarity.

Minority opinion:

A minority composed of the Danish People’s Party wishes to express the view that Protocol 30 (to the Amsterdam Treaty) on the application of the principle of subsidiarity and proportionality sets out the following in paragraph 4: “For any proposed Community legislation, the reasons on which it is based shall be stated with a view to justifying its compliance with the principles of subsidiarity and proportionality; the reasons for concluding that a Community objective can be better achieved by the Community must be substantiated by qualitative or, wherever possible, quantitative indicators”.

The Commission justifies the proposal’s compliance with the principles of subsidiarity and proportionality with the fact that it will promote trust between the peoples of Europe. This justification is, according to the Danish People’s Party, not an objective and relevant criterion under the Treaty and Protocol 30. Here it is decisive that the aim – that is stemming from the legal basis - could be achieved better in this way. There is no legal basis in the EC Treaty or the EU Treaty to promote trust between the peoples of Europe. Such a

legal basis would by the way be a blank cheque to the EU to adopt regulatory measures.

Against this background the Danish Peoples' Party finds the Commission's proposal in non-conformity with the Treaties.

The Danish Peoples' Party demands as a minimum requirement that an assessment of the level of protection in the 27 EU Member States is elaborated. As is well known they are all members of the Council of Europe and thereby bound by article 6 of the European Convention on the protection of Human Rights laying down the right to a fair trial. This ought to be a minimum requirement for all EU Member States. And it must be dealt with by the Strasbourg Court and not by the EU institutions.

Yours sincerely

Per Skaarup
Chairman of the Legal Affairs Committee

Anne-Marie Meldgaard
Chairman of the European Affairs
Committee