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Position paper on “further procedural safeguards in criminal proceedings”

The ÖRAK (Austrian Bar) is the legally established representation of lawyers in Austria and, as such, is appointed to safeguard the rights and matters of Austrian lawyers at national, European and international level. It is particularly responsible for the submission statements on draft laws as well as for reporting deficiencies in the administration of justice and administration to the competent authorities and for proposals for the improvement of the administration of justice and administration.

The ÖRAK (Austrian Bar) takes note of the efforts of the European Commission to protect the procedural rights of both defendants and victims in criminal proceedings, particularly referring to the work done so far with regard to procedural safeguards and the numerous measures taken to enhance judicial cooperation in criminal matters in the EU (for example the European Arrest Warrant, the setting up of Europol, Eurojust, and the European Public Prosecutor’s Office).

After publishing the Commission Work Programme 2020 the ÖRAK (Austrian Bar) would like to take the opportunity to comment on the need of further initiatives regarding procedural safeguards:

It is generally recognised in all EU Member States that mutual recognition as a legal principle in criminal matters requires **mutual trust**. Therefore, mutual recognition and mutual trust are the core principal of the judicial cooperation between the EU Member States. In order that mutual trust can be genuinely assured, **adequate safeguards in the criminal justice area and the correct implementation of these are necessary**.

The Roadmap on procedural rights of 2009 was a step in the right direction. Nevertheless, not all Member States have properly transposed the existing EU Directives on procedural and victim’s rights and there are many variations in how these are applied across Member States. In consequence, the **implementation of these**



directives at national level must be monitored carefully to ensure the effectiveness of the existing EU Directives.

In addition, the ÖRAK (Austrian Bar) strongly suggests that **legislative action should continue to be taken at EU level in order to achieve minimum standards** of the rights of suspected or accused persons, as well as victims, in criminal proceedings.¹ Firstly, the standards and procedural rights in the national systems of the Member States still vary greatly. Due to these national differences criminal proceedings suffer from a lack of protection. And secondly, there are a lot of aspects in the criminal justice area that have not yet been considered, these include, for instance, the need for minimum standards for pre-trial detention and prison conditions. The focus should lie especially on the issues of the duration of pre-trial detention, less intrusive measures and specific remedies. The very different standards of prison conditions in member states are one of the shortcomings in the European Arrest Warrant proceedings, Therefore, the **European Arrest Warrant, requires improvement and modernisation**. Certain rights of accused persons and victims should be guaranteed at a minimum level.

There is also a **need for rules regarding the cross-border use and admissibility of certain types of evidence**. It is necessary to guarantee proper participation by the defence in the investigations of criminal proceedings, especially in view of the new evidence related measures, like the European Investigation Order and the potentially soon to be adopted Regulation on European Protection and Preservation Orders for electronic evidence in criminal proceedings. To avoid conflicts of jurisdiction and adhere to the principle *ne bis in idem* further measures should be taken. Lastly, **additional rules regarding remedies** could ensure that effective minimum standards in the Member States exist and enhance the mutual trust.

¹ It has to be noted, that Art. 82 (2) TFEU only allows the legal form of a directive. The so-called e-evidence proposal has shown that the European Commission might evaluate the possibility of further using regulations in the area of criminal law despite this fact. The ÖRAK would therefore also like to caution that using the form of regulations for minimum standards would mean a significant risk of lowering standards of legal protection. Hence, for both reasons mentioned before, minimum standards should be set by the legal instrument of directives – as it has already been done in the past.



The Commission should aim to achieve additional procedural safeguards to not only ensure EU citizens' rights but also the Member States confidence in criminal proceedings and their judicial cooperation.

In conclusion, the ÖRAK (Austrian Bar) looks forward to work with the European Commission in order to protect the functioning of EU judicial cooperation in criminal matters and to further ensure procedural rights of victims and defendants.

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