CONSEJO GENERAL DEL PODER JUDICIAL
ESCUELA JUDICIAL

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Red Europea de Formación Judicial (REFJ)
European Judicial Training Network (EJTN)
Réseau Européen de Formation Judiciaire (REFJ

MÓDULO I

TEMA 3

Strengthening mutual trust: procedural guarantees, the rights of victims and personal data protection

5th Edition

2013

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Con el apoyo financiero del Programa de Justicia Penal de la Unión Europea
With the financial support from the Criminal Justice Programme of The European Union
Avec le soutien financier du Programme de Justice Pénale de l'Union Européenne

SUMMARY

1. INTRODUCTION: STRENGTHENING MUTUAL TRUST

In line with the approach adopted in the previous unit, we share the notion that the configuration of the European Union as a genuine space of freedom, security and justice can be considered to have been based essentially on the free movement throughout its territory of the judicial decisions issued in any of the Member States, in such a way that the effectiveness and implementation of the same is identical to that envisaged for domestic decisions in the country of enforcement.

This being the case, it is worth adding that the achievement of the European judicial area entails the effective suppression of any exequatur proceedings as a prerequisite for the recognition and enforcement of the foreign judicial decisions, an objective that can be achieved by means of the effective implementation of the principle of mutual recognition.

This being the state of affairs, accepting the equivalence of judicial decisions coming from any Member State without questioning either its capacity or respect for the right to effective legal protection and a fair and public hearing –thus automatically assuming its effectiveness and enforceability– requires a high degree of trust –we could almost say unconditional–, in the legal and judicial systems of the other countries.

Even so, this reliability cannot be taken on faith; it must be based on specific provisions that duly guarantee strict respect for essential procedural principles and the proper operation of the courts and other authorities, in particular when we are talking about the criminal justice system, as it greatly affects the individual freedoms of citizens.

This means that effective implementation of the principle of mutual recognition requires a prior activity aimed at generating or elevating the levels of reciprocal trust between Member States, which will be achieved largely by means of establishing shared minimum standards and the harmonisation of criteria for the application of the same.

In this complex process of convergence, at the same time as work is being done on the approximation of certain substantive law rules, a conciliation of essential procedural aspects is also necessary, in order to likewise generate trust in relation to the correct

processing and resolution of criminal cases: trust that foreign rules are adequate and a guarantee that they are applied appropriately by the authorities.

In this regard, the allocation of authority entitling the Community institutions to intervene is expressly envisaged in two articles of the Treaty on the Functioning of the European Union, which read as follows:

> Article 16.2:
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> "The European Parliament and the Council, acting in accordance with the ordinary legislative procedure, shall lay down the rules relating to the protection of individuals with regard to the processing of personal data by Union institutions, bodies, offices and agencies, and by the Member States when carrying out activities which fall within the scope of Union law, and the rules relating to the free movement of such data."
>
> Article 82.2:
>
> "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 European Parliament and the Council may, by means of directives adopted in accordance with the ordinary legislative procedure, establish minimum rules. Such rules shall take into account the differences between the legal traditions and systems of the Member States.
>
> They shall concern:
>
> a. mutual admissibility of evidence between Member States;
> b. the rights of individuals in criminal procedure;
> c. the rights of victims of crime;
> d. any other specific aspects of criminal procedure which the Council has identified in advance by a decision; for the adoption of such a decision, the Council shall act unanimously after obtaining the consent of the European Parliament.

> Adoption of the minimum rules referred to in this paragraph shall not prevent Member States from maintaining or introducing a higher level of protection for individuals."

The importance of these provisions is therefore unquestionable, insofar as they contemplate essential aspects of this line of work (objectives, instruments and subject matter):

- A clearly defined objective: promote the implementation of the principle of mutual recognition of judicial decisions with a view to favouring, in general terms, police and judicial cooperation in criminal matters in the sphere of the EU.
- A specific legislative instrument to be used preferentially: the directive, adopted in accordance with the ordinary legislative procedure and that requires transposition to domestic legal systems.
- Several basic areas already identified (data protection, admissibility of evidence, guarantees for the accused and rights of victims), notwithstanding the possibility of extending the scope to other aspects of criminal procedure when unanimously agreed (by means of a decision of the European Parliament and the Council).
- And a couple of supplementary points: the need to take into account the different legal traditions of the Member States; and the consideration of minimum standards, so that the domestic levels of protection can exceed the requirements set by the EU rules without any problem.

On the basis of these premises, and as is the case in relation to other areas, the legislative work aimed at the actual application of these provisions is proving to be intense indeed. At present there are several regulatory instruments that have been approved and are in force with several draft bills in varying stages of preparation, all of which address questions that while very different, are designed to promote this mutual trust and ensure a high degree of protection of rights and guarantees linked to criminal proceedings.

This unit, while not an attempt to provide an exhaustive insight, aims to provide a panoramic perspective, reviewing the state of affairs in relation to the three areas that can be considered essential in the context of judicial cooperation in criminal matters, namely the procedural guarantees of the accused, the standing of victims of crime and the protection of the personal data handled in relation to the investigations and criminal proceedings.

In this regard, it is appropriate to start out with the Stockholm Programme[1] –adopted as we know at the European Council held on 10 and 11 December 2009–, as it is the document that establishes the roadmap for the 2010-2014 period, which we are currently halfway through at present.

It is hardly necessary to mention that said text clearly affects the measures to be adopted in order to advance towards a space of freedom, security and justice –the main concern of the Member States– based on the Treaty of Lisbon and taking into account the new developments introduced by the entry into force of the same.

Thus, attending to the interests and needs of citizens is established as the priority, assuming the challenge of ensuring the respect for and integrity of fundamental rights and freedoms, while at the same time guaranteeing security, so that the rights are respected throughout the territory of the European Union, which should be considered a single space in this regard. To that end, a series of instruments are designed, the foremost amongst which are mutual trust and understanding between the different legal systems of the Member States.

In this regard, noticeable emphasis is put on the need to supervise due compliance by the Member States with the European Convention on Human Rights, highlighting in particular the following questions in relation to the areas with which we are dealing:

- Respect for the procedural guarantees to which the accused party in any criminal proceedings is entitled (section 2.4), is included in the specific Stockholm Programme roadmap for strengthening procedural rights of

[1] Stockholm Programme – An open and secure Europe serving and protecting citizens (2010/C 115/01) OJEU C 115, 4.5.2010.

suspected or accused persons in criminal proceedings[2], calling for the presentation of the appropriate legislative initiatives, as well as for new questions to be addressed.

- As for due consideration for victims of crime (sections 2.3.4 and 4.4.2), an overall improvement of the measures for the support and protection of the same is proposed and, in particular, specific attention for particularly vulnerable victims. Likewise, the appropriateness of restating the standing of victims and the regulations on compensation for damages derived from offences is suggested.
- An impulse is also given to the protection of the personal data handled in the context of the investigations and criminal proceedings (section 2.5), from the general perspective of the need to safeguard citizens' rights in the face of an increasing exchange of data, guaranteeing protection of one's private life.

Finally, with a view to developing these somewhat generic provisions and translating them into specific measures, the text of the Programme itself urges the Commission to present a roadmap for swift implementation covering the specific instruments that must be prepared in order to achieve the objectives established, as well as the dates set in that regard.

Immediately, and in strict compliance with this mandate, the Commission sent an Action Plan in April 2011[3] in which it takes over from the Council and establishes a series of specific actions and a timetable for the adoption of the same, which can be summarised –for our purposes– as follows (the date set for the same appears in brackets):

- Procedural guarantees of accused persons:
    - Legislative proposal on Translation and Interpretation (2010).

[2] Resolution of the Council of 30 November 2009 on a Roadmap for strengthening procedural rights of suspected or accused persons in criminal proceedings. OJEU C 295, 04.12.2009. We will refer to this text in greater detail in the corresponding section.

[3] Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions - Delivering an area of freedom, security and justice for Europe's citizens - Action Plan Implementing the Stockholm Programme. COM(2010) 171 final. Presented by the Commission on 20 April 2010.

- Legislative proposal on Information on Rights and Information about the Charges (2010).
- Legislative proposal on Legal Advice and Legal Aid (2011).
- Legislative proposal on Communication with Relatives, Employers and Consular Authorities (2012).
- Legislative proposal on Special Safeguards for Suspected or Accused Persons who are Vulnerable (2013).
- Green paper on whether elements of minimum procedural rights for accused and suspect persons, other than those covered by the previous legislative proposals, need to be addressed (2014).

- Assistance for victims:
  - Legislative proposal on a comprehensive instrument on the protection of victims and action plan on practical measures including developing a European Protection Order (2011).
  - Communication on a new integrated strategy on fighting trafficking in human beings, and on measures to protect and assist victims (2011).
- Protection of personal data:
  - Communication on a new legal framework for the protection of personal data after the entry into force of the Lisbon Treaty (2010).
  - New comprehensive legal framework for data protection in the European Union (2010).
  - Recommendation to authorise the negotiation of a personal data protection agreement for law enforcement purposes with the United States of America (2010).
  - Communication on core elements for personal data protection in agreements between the European Union and third countries for law enforcement purposes (2012).

- Other specific measures in relation to criminal matters (criminal records, exchange of information, register of convicted third countries nationals).

The calendar is clearly conceived merely as a guideline and, as such, the dates envisaged should not be considered binding at all; this means that, in practice, they are not respected in strict terms. In any event, by studying the actions performed until now, it is clear, in general terms, that the roadmap has been accepted and it has been decided to work according to the programme established. As such, in the following sections, we will go on to analyse the main initiatives developed over this period of time.

Finally, and before embarking on our study, we must make reference to the territorial scope of the regulatory instruments adopted in relation to these areas. This is due to the fact that three of the Member States –Denmark, Ireland and the United Kingdom– have a particular status in relation to certain topics, meaning that they do not always participate in the legislative procedures, and are not therefore automatically bound by the rules approved in each case.

This peculiar situation derives from Protocols 21 and 22 annexed to the Treaty on European Union and the Treaty on the Functioning of the European Union, which contain the *opt-out* and *opt-in* clauses*,* the former applicable to Denmark and the latter to Ireland and the United Kingdom. Thus, by virtue thereof, Denmark can voluntarily opt out of any legislative procedure for the adoption of rules related to police and judicial cooperation in criminal matters, with the resulting instruments not being applicable to it. Meanwhile, Ireland and the United Kingdom are automatically excluded from such processes although they have the possibility to expressly request to participate in the same, undertaking to assume the results.

The end result of these prerogatives is a fracturing of this single space, meaning that we have an uneven map which obliges us to analyse the territorial scope of each of the rules approved individually in order to determine in which Member States it applies[4].

[4] Notwithstanding a possible subsequent extension of the scope when any of the excluded states so agrees with the rest.

2. THE PROCEDURAL GUARANTEES OF THE ACCUSED PERSON

As set out in the foregoing section, trust for the respect of the accused person's procedural guarantees is a basic premise for the operation of the principle of mutual recognition in the Community sphere, regardless of the place where the corresponding trial takes place. In line with this approach, in the 2010-2014 period we can already see how an attempt is being made to launch an ambitious legislative programme that contemplates several initiatives in this regard, affecting the main rights of suspects and accused persons in the context of criminal proceedings.

All in all, seeking to address these questions is nothing new, as this subject matter has been the object of an intense legislative activity in recent times. In this regard, we would have to go back at least to 2004, the year in which the Commission presented a draft framework decision on the different guarantees of the accused person[5] which, while not ultimately approved, did set the stage for the subsequent institutional intervention that we are now analysing.

In this regard, it is important to take into account that even then the starting point was the aim of determining the essential procedural guarantees of all accused persons and ensuring a minimum, inalienable content was established in different international treaties, including the European Convention on Human Rights –duly implemented by the European Court of Human Rights–, as well as in purely Community rules –such as the Charter of Fundamental Rights of the European Union, legally binding since the recent entry into force of the Treaty of Lisbon.[6]

Even though this was the case, and despite of the indisputable obligatory nature of said texts for the Member States, in practice there were –and indeed continue to be– significant differences in relation to the degree of compliance with said guarantees in

[5] Proposal for a Council Framework Decision on certain procedural rights in criminal proceedings throughout the European Union. COM(2004) 328 final, presented by the Commission on 28 April 2004.

[6] In this regard, it may prove illustrative to consult the 2011 Report on the Application of the EU Charter of Fundamental Rights [ref. COM(2012) 169 final], drawn up by the Commission and forwarded to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions. This document was presented on the 16th of April and whilst it has not yet been published in the OJEU, it is available via the following link: http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=COM:2012:0169:FIN:EN:PDF (last consulted on the 13/09/2012).

the different domestic legal systems. This situation must be considered eminently anomalous, as it leads to reticence and a lack of trust, which creates a nearly insurmountable obstacle to the effective application of the principle of mutual recognition.

Faced with this bleak panorama, it was decided that the Community institutions should act and make a decided push towards the harmonisation of criminal procedure in relation to the procedural rights of accused persons. The desire for intervention in this regard was an old aspiration that had already been highlighted years earlier in the conclusions of the Tampere Council of 1999, but which was not translated into concrete action until the unsuccessful draft framework decision of 2004.

This proposal aimed to address the main guarantees that should be recognised to all persons suspected of having committed an offence in an integral, global fashion. Ultimately, its lengthy and unfortunate passage led to its ambitious initial project being progressively scaled down, with the scope only affecting the right to information, to legal assistance, to an interpreter and to the translation of documents. Even so, in June 2007, after over three years of intense debates, the unwillingness of several Member States[7] prevented its definitive approval and represented the temporary abandonment of the initiative.

At that time, the opposing stances of the different countries showed that it was impossible to reach the necessary consensus to approve an instrument that would allow the harmonisation of the different procedural rights *en bloc*, meaning that if progress was to be made on this point, a different strategy was inevitably necessary.

The Swedish government accepted this immediately, to the extent that, taking advantage of its turn as president of the Council in the second half of 2009, it decided to address the question again, albeit from a somewhat original perspective. It was clear that the aim was ultimately identical –the harmonisation of the main procedural guarantees–, but this was to be achieved via very different channels. It was proposed to address each of the different rights independently, so that, by means of partial agreements limited to specific points, it would be possible to advance progressively

[7] Cyprus, the Czech Republic, Ireland, Malta, Slovakia and the United Kingdom.

and gradually until shared minimum standards could be established in relation to the different rights of the accused person.

This new tactic –more appropriate in view of the extreme sensitivity of the subject matter– was not long in bearing fruit and, in the space of just a few months, the first agreement on the itinerary to be followed in the process was achieved. Thus, on 30 November of the same year, the Justice and Home Affairs Council adopted the above-mentioned Roadmap for strengthening the procedural rights of suspected or accused persons in criminal proceedings[8] by consensus, representing the commencement of a new stage in the treatment of this area.

In this text, the Council proposed six guidelines which were to be given priority, inviting the Commission to present the necessary legislative proposals to that end, although the lines indicated were under no circumstances to be considered an exhaustive list nor was the order of the same to be considered mandatory. The following were the steps proposed:

- Measure A.- Assistance by an interpreter and translation of essential procedural documents, in relation to the need to follow and understand what is happening. There was express reference to the needs of suspected or accused persons with hearing impediments.
- Measure B.- Information on Rights and about the Charges with sufficient time to prepare a defence, without prejudicing the due course of the criminal proceedings.
- Measure C.- Legal advice as soon as possible in the proceedings, as well as legal aid, as the case may be.
- Measure D.- Communication with Relatives, Employers and Consular Authorities with regard to the deprivation of liberty.

[8] Resolution of the Council of 30 November 2009 on a Roadmap for strengthening procedural rights of suspected or accused persons in criminal proceedings (OJEU C 295, 4.12.2009). We have already seen how this text was incorporated into the Stockholm Programme and was in turn developed by the Commission Action Plan which determines specific actions to be adopted in order to execute it.

- Measure E.- Special Safeguards for Suspected or Accused Persons who are vulnerable (persons who cannot understand or follow the proceedings owing, for example, to their age or mental or physical condition).
- Measure F.- Preparation of a Green Paper on Pre-Trial Detention.

Despite the fact that this list was merely a guideline, it is clear that the Commission has been scrupulous in its respect of both the order and the content proposed by the Council. As a result, today we can see the first results that show indications of the roadmap being realised:

- A directive –approved and in force– on the right to interpretation and translation in criminal proceedings[9], as mentioned in Measure A of the roadmap. This instrument combines the Commission's proposal with an initiative from several Member States[10], taking the provisions of the original framework decision proposal of 2004 as terms of reference 2004.
- A pair of proposals for directives from the Commission that are still being processed: the first in relation to the right to information in criminal proceedings[11] –a guarantee contained in Measure B–; and the second on the right to legal advice in criminal proceedings and the right to communication when arrested[12], which combines Measures C and D of the roadmap in a single document.

These three instruments have a common denominator, which is the philosophy behind them, insofar as they establish an objective of approximating internal rules in order to harmonise practice, establishing minimum standards in relation to certain rights that should be assumed by the internal legal systems by means of the corresponding transposition.

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[9] Directive 2010/64/EU of the European Parliament and of the Council of 20 October 2010 on the right to interpretation and translation in criminal proceedings (OJEU L 280, 26.10.2010).

[10] Austria, Belgium, Estonia, Germany, Finland, France, Hungary, Italy, Luxembourg, Portugal, Romania, Spain and Sweden.

[11] Proposal for a Directive of the European Parliament and of the Council on the right to information in criminal proceedings. COM (2010) 392 final (amended by the Parliament on 13.12.2011).

[12] Proposal for a Directive of the European Parliament and of the Council on the right of access to a lawyer in criminal proceedings and on the right to communicate upon arrest. COM (2011) 326 final.

What is more, while each of the texts implements specific content pertaining to one or more guarantees of accused persons with particular provisions in this regard, we can also find certain shared elements in them. In terms of their scope, several of the specifications made in both the approved directive and the different proposals are the same.

First of all, the rights and guarantees regulated are universally recognised in favour of all persons, regardless of nationality or place of residence, the only condition being that they appear as respondent in legal proceedings of a criminal nature, that is, that they appear as a suspect or accused person in certain procedural steps that may constitute:

- Criminal proceedings, strictly speaking.
- Proceedings for the enforcement of a European arrest warrant.
- Or when challenging before a criminal court penalties imposed by bodies of another nature[13].

Meanwhile, a broad timeframe is established, meaning that these rights must be guaranteed as of the moment the person is informed of the charge or accusation of a criminal offence, or as of the moment of his/her arrest in the case of proceedings for the enforcement of a European arrest warrant, with these rights being maintained throughout the trial, until the definitive decision becomes final. In line with this approach, the extension of these rights to the enforcement stage is tacitly ruled out.

As far as the territorial scope of application is concerned, the directive on the right to interpretation and translation and the directive on the right to information only mention the exclusion of Denmark, as Ireland and the United Kingdom have participated in the legislative process on a voluntary basis, and as such are bound by the instrument that is ultimately approved. Meanwhile, the proposal on the right to legal advice and the right to communication upon arrest also mentions the exclusion of Denmark, although the position of Ireland and the United Kingdom in this regard is not yet defined, meaning that we are waiting for them to make their position clear prior to final approval; otherwise, the directive ultimately approved will not apply to them.

[13] However this latter possibility is not contemplated in the proposal for a directive on the right to legal advice in criminal proceedings and the right to communication upon arrest.

Finally, we should mention the term envisaged for the transposition of these provisions. In this regard, the directive already approved sets a term of three years in this regard –expiring on 27 October 2013–, while the different proposals establish a shorter timeframe, of just 24 months, for the incorporation of the same to the domestic legal systems. In any event, these instruments represent an important step forward and embody the objectives set with regard to harmonisation, meaning that their effectiveness depends on the due adaptation of the law of the different countries to their provisions where necessary.

Having established these shared bases, we should now take a look –albeit a brief one– at the particular provisions of each of the instruments in relation to the different guarantees regulated therein. We will start with the **directive on the right to interpretation and translation in criminal proceedings**, which implements two guarantees that while closely linked, also have their individual elements.

This instrument is born of the requirement that domestic legal systems establish the necessary channels and procedures to determine the need to provide these services in each case, which arises when it is verified that the suspected or accused person does not speak or understand the language of the proceedings. In line with this approach, the end of such assistance must also be contemplated where, while the process is pending, the recipient acquires a command of the language that is sufficient to render such assistance unnecessary. Meanwhile, there is express recognition of the case of persons with hearing or speaking difficulties, imposing the obligation to give them the necessary specific assistance by means of the intervention of the corresponding professionals.

The promotion and adoption of these measures may be declared *ex officio* or at the request of a party and a channel of appeal must be specified in the event of a decision denying the same. In any event, the service will be free of charge for the recipient as it is envisaged that each state assume the costs derived regardless of the result of the trial (acquittal or conviction).

Meanwhile, the Member States are also obliged to guarantee the quality of the services, adopting the corresponding provisions in order to ensure the registration of oral interpreters and translators, as well as a complaints procedure for any deficiencies

in the intervention of the corresponding professional, allowing for their replacement, if applicable. Moreover, in order to ensure the excellence of the service, the importance of establishing national registries of independent, duly qualified translators and interpreters at the disposal of lawyers and authorities is stressed, although the training or qualification required in this regard is not specified.

With regard to the attendance of an interpreter, this will be required as of the preliminary investigations, regardless of what authority is performing it and includes police questioning, as well as for interviews between lawyer and client. Moreover, albeit on an exceptional basis, the use of new technologies is allowed, meaning that the interpreter may intervene via videoconference, telephone or the internet. Indeed, the states are urged to offer specific training to judges, prosecutors and other persons involved on the appropriate way of acting in these cases in order to ensure effective communication.

Meanwhile, the right to translation covers documents considered essential for the proceedings, with a written translation being supplied within a reasonable timeframe of all those that are essential for ensuring the fairness of the trial and in order to ensure that the accused person is in a position to properly defend himself/herself. To be precise, translation is required of decisions that entail a deprivation of liberty, charges or indictments, the document issuing a European arrest warrant, and of the final judgment or decision in the proceedings. Any other documents may be translated if so decided by the competent authority, either *ex officio*, or at the request of a party.

Even so, it will not always be necessary to translate entire documents, and non-essential parts may be omitted. Likewise, and on an exceptional basis, oral summaries will be allowed, provided they do not affect the fairness of the proceedings

Finally, it is possible to waive the right to translation –although not to interpretation–, provided this is done unequivocally and voluntarily, after informing the person of the consequences of said waiver and recording the potential recipient's decision to do so.

Further to the above, we are aware that EU intervention did not end with the approval of this directive, but immediately continued with the promotion of new legislative instruments designed to secure other procedural guarantees of accused persons. Thus, in July 2010, the Commission sent its **proposal for a directive on information**

in criminal proceedings, which was definitively ratified on the 22nd of May 2012. This space of time, less than two years, is not common and can be explained by the high degree of consensus that was reached from the outset with regards to the final version of the instrument, whereby approval was seen as more or less imminent.

As far as the specific content of these guarantees is concerned, it is a question of unifying the information that must be transmitted to the suspect with regard to his/her procedural rights and the content of the accusation made against him/her. In this case, the procedure is different depending on whether or not the person has been arrested, meaning that, in relation to the rights of any accused person, express reference must be made to the following at least:

- Right to legal advice and legal aid where necessary.
- Right to be informed of the accusation and see the case-file where appropriate.
- Right to an interpreter and to the translation of essential proceedings documents.
- Right to remain silent.

However, if the person has been arrested, he/she will also have to be informed of the following:

- Right to have consular authorities and one other person informed of the arrest.
- Right to urgent medical attention.
- Right to challenge the deprivation of liberty and request conditional release.
- Maximum term for which the deprivation of liberty can be maintained before being brought before the court.

In any event, the information should be transmitted immediately in order to ensure effectiveness, in a simple manner and in a language that the addressee can understand. It will be done in writing if the person has been arrested (with written proof of delivery); otherwise, it may be done verbally. Exceptionally, and for obvious practical

reasons, the initial information may be verbal (even through an interpreter), notwithstanding delivery of the same in writing subsequently.

Persons who have been arrested will therefore be given a letter stating their rights in writing. To that end, the text of the proposal contains two annexes, which contain templates for the letters of rights –one for any criminal proceedings and the other for cases of arrest derived from a European arrest warrant–, with texts that are easy to understand and are to be translated into the different official languages.

Secondly, the right to be informed of the content of the charge or accusation is recognised, with the two cases being dealt with individually. A charged person will be informed of the charge (informed of the criminal offence attributed to him/her as soon as possible and in the necessary detail to ensure the fairness of the proceedings and the effective exercise of the right to defence) and allowed to see the case-file (in order to be able to challenge the deprivation of liberty), also requiring the recording of the police questioning.

Meanwhile, the accused person will be informed of the accusation (when appearing before a court at the latest) and given sufficient access to the case-file to guarantee its right to defence. The right to consult said documentation can only be ruled out on a temporary basis, by court order and when essential in order to guarantee the fundamental rights of another person or protect a relevant public interest. In this regard, the following purposes will be considered legitimate: to avoid prejudicing an investigation in progress or affecting the internal security of the state.

Finally, reference is made to the possibility of omitting these rights and the need for specific training for the different operators. In any event, the text is pending final approval, notwithstanding possible amendments that may be introduced in the remaining stages of the process.

The tight timeframe envisaged means that the processing of the different regulatory instruments overlaps, in such a way that, while we are still waiting for final agreement on the directive on information, the legislative procedure regarding a new provision has already been set in motion. This situation is derived from the launch by the Commission of a new proposal in 2011, the **directive on the right of access to a lawyer in criminal proceedings and on the right to communicate upon arrest**.

This provision addresses the development of two guarantees that in principle are inalienable –a waiver is allowed aside from the provisions of domestic law in this regard and is revocable in any event– and any violation of which must be susceptible to complaint in such a way that the challenge makes it possible for the situation to be restored and prevent harm to the right to defence.

Starting with communication of the fact of the arrest, this right arises at the moment the deprivation of liberty takes place and exercise of the same must be allowed as soon as possible. To that end, the person in question will be allowed to contact a relative or an employer or the consular or diplomatic authorities in the case of a foreign citizen. Moreover, and with a view to enhancing this right, the case of a child, the legal representative or another responsible adult will have to be informed.

Meanwhile, the right of access to a lawyer is guaranteed throughout the proceedings, in a manner that ensures effective exercise of the right of defence. In this regard, legal advice must be supplied as soon as possible, as of the moment the accused person is informed of the suspicions affecting him/her, or after he/she has been arrested in the case of a procedure for the enforcement of a European arrest warrant. Moreover, it is expressly stated that the presence of a lawyer is always required at three essential moments:

- As of when the deprivation of liberty takes place.
- Prior to the start of any police questioning.
- And at the moment any procedural act or collection of evidence is performed at which the presence of the suspected person is allowed or required.

The provisions of this rule continue and also stress the specific content of this guarantee, indicating different manifestations that it is considered to comprise, notwithstanding recognition of the exceptional and temporary nature of some of them:

- The accused person must be allowed to meet his/her lawyer in confidentiality, with no restriction on the frequency or duration of such meetings, and the lawyer may be one appointed by the court in accordance with the corresponding domestic regulations.

- The right for the lawyer to verify the conditions of the arrest and attend any questioning or hearing, being entitled to ask questions and request or make clarifications, which will be included in the corresponding record.
- The right for the lawyer to be present at any investigation or collection of evidence which the accused person is required or allowed to attend.

Finally, it must be borne in mind that the Council meeting that took place on the 8th of June 2012 was able to break the deadlock in negotiations with regards to the proposed directive, opting for a an approach that is clearly founded on safeguarding. Thus, agreement has been reached with regards to the general focus and approval in the first reading is anticipated within a relatively brief period of time.

In any event, it is clear that this proposal shares the same philosophy as the provisions analysed earlier and that a global agreement is pending that will facilitate its final approval, notwithstanding any amendments that may be included during its passage.

By way of a conclusion to this section, I would just like to indicate that a push for the regulation of the remaining procedural guarantees of the accused person is imminent in accordance with the roadmap as is the consultation on interim custodial measures. All of this is notwithstanding the fact that the initial field of play should be extended by addressing other rights not expressly envisaged thus far.

3. THE STANDING OF VICTIMS

In this second section we will analyse the institutional work aimed at enshrining the rights and guarantees of the victims of criminal offences, an area that had already largely been addressed from the Community perspective prior to the approval of the Stockholm Programme. Thus, there are different kinds of regulatory instruments approved, in force, binding and duly transposed to domestic legal systems (or, at least, in relation to which the term established for the same has expired). In this regard, it is first worth referring in particular to the framework decision on the standing of victims in

criminal proceedings[14] and the directive on compensation to crime victims[15], as they constitute the framework of reference in the field.

The approval of what is termed **the standing of victims in criminal proceedings** was contemplated in the action plan for the implementation of the Treaty of Amsterdam and constituted a response to what was at the time, and continues to be, a clear objective, namely the establishment of minimum rules that allow the harmonisation of the practice of the different Member States, as a basis for the mutual trust that must underpin implementation of the principle of mutual recognition of foreign judicial decisions.

To that end, its starting point is the notion of the victim as natural person who has suffered harm or injury, caused by a criminal offence, and specifies some of the obligations of the Member States in relation to the same, without seeking to place them on the same level as those of the parties. In this regard, in general terms, this rule sets the materialisation of the following conditions in relation to persons harmed and/or injured by offences as its objectives:

- Their intervention in the criminal proceedings, playing a real and appropriate role for the protection of their legitimate rights and interests.
- With due respect for the dignity of the individual and ensuring victims who are particularly vulnerable can benefit from specific treatment.

With a view to achieving these aims, a series of victims' guarantees are recognised that, in any event, do not translate automatically into specific obligations for the states. Even so, the effort made to identify the most controversial points and the reference – albeit excessively vague– to the more significant rights to guarantee the due protection of the interests of the harmed and/or injured person in the criminal proceedings should be valued positively. The rights we should mention include the following:

- To receive, from their first contact with law enforcement agencies, in languages commonly understood, information of relevance for the

[14] Council Framework Decision 2001/220/JHA of 15 March 2001 on the standing of victims in criminal proceedings. OJEU L 82, 22.3.2001.

[15] Council Directive 2004/80/EC, of 29 April 2004 relating to compensation to crime victims. OJEU L 261, 6.8.2004.

protection of their interests (the type of support they may receive and the mechanisms of protection envisaged, the requirements for the reporting and processing of the offence, or the possibility of legal aid, among others).

- To be heard in the proceedings, to provide means of evidence and be reimbursed for the expenses derived from their participation in the same.
- To be informed of the processing of the complaint, the progress of the proceedings and the conclusion of the same.

Furthermore, it is possible to identify certain explicit commitments to achieve results assumed by Member States, although an excessively open wording of these propositions implies that the field of action is too broad when it comes to transferring these provisions to the domestic legal systems, which may lead to them being mere declarations of best intentions, more or less devoid of content. In any event, the EU countries undertake to adopt the measures necessary in order to, among other things:

- Minimise communication problems that make it difficult for the victim to participate in the criminal proceedings as a witness or a party.
- Guarantee the protection of the victim and his/her relatives both as regards their safety and protection of their privacy and photographic image.
- Allow the satisfaction of civil liability in the context of criminal proceedings within a reasonable term.
- Promote mediation in criminal matters and ensure the effectiveness of the any agreements reached.
- Minimise the difficulties of victims residing abroad.
- Promote the intervention of special services and victim support organisations.
- Provide appropriate training for all operators, including police officers and lawyers.
- Prevent secondary victimisation and subjecting the victim to unnecessary stress.

Following the approval of the standing of victims, a supplementary provision was adopted, the **directive relating to compensation for crime victims**, which we mentioned earlier, and which establishes minimum standards for facilitating access to compensation in cross-border cases. This text regulates the right of every victim of a violent intentional crime to file an application for compensation in the Member State of residence, to be forwarded to the country in whose territory the offence was committed, so that compensation can be granted or denied in accordance with the corresponding internal regime.

These provisions are supplemented by the obligation of the victim's Member State of residence to offer him/her information and assistance free of charge, placing the necessary forms at his/her disposal and immediately forwarding the application. However, the application must be drafted in a language accepted by the deciding state, which will acknowledge receipt and notify the corresponding decision as soon as possible to both the applicant and the assisting authority.

Taking this regulatory framework as a starting point, the Council, via the Stockholm Programme, aims to go into the institutional protection of crime victims in greater depth, embarking on new legislative actions in this field. To execute this plan, the legislative apparatus is set in motion, whereby various initiatives responding to this objective coexist and are processed simultaneously. This being the state of affairs, we should now perform an analysis –albeit a brief one– of the main regulatory instruments that we should take into account in this regard and that, without aiming to be exhaustive, we can identify –in chronological order– as the following:

- The directive on preventing and combating trafficking in human beings and protecting its victims[16].

- The directive on the European protection order[17].

[16] Directive 2011/36/EU of the European Parliament and of the Council of 5 April 2011 on preventing and combating trafficking in human beings and protecting its victims. OJEU L 101, 15.4.2011. This instrument replaces Council Framework Decision 2002/629/JHA on combating trafficking in human beings.

[17] Directive 2011/99/EU of the European Parliament and of the Council of 13 December 2011 on the European protection order. OJEU L 338, 21.12.2011.

- The resolution of the Council on a Roadmap for strengthening the rights and protection of victims, in particular in criminal proceedings[18].
- The directive on the rights, support and protection of victims of crime[19].
- The proposal for a regulation on mutual recognition of protection measures in civil matters[20].

According to this list, we will start with the **directive on preventing and combating trafficking in human beings and protecting its victims**, whose term of transposition ends on 6 April 2013. This provision, in addition to introducing shared minimum standards on the definition of criminal offences in relation to the trafficking in human beings and the penalties to be imposed, contains certain specific provisions for the protection of the victims of this kind of crime, which is something we should take a brief look at.

Thus, the starting point is the need to exempt victims who may themselves have participated in unlawful activities from criminal liabilities when obliged to provide collaboration, so that the Member States undertake to adopt the measures necessary to avoid them being tried or, as a last resort, to avoid them being sentenced.

Moreover, emphasis is placed on the need to offer and guarantee assistance and support for such persons, both during and after any criminal proceedings, in order to ensure effective exercise of their rights. In this regard, immediate attention is envisaged when the suspicion arises that the person is a victim of trafficking in human beings, and any aid cannot be conditioned upon their collaboration in the investigation of the offence.

With regard to the specific measures to be adopted, we start with the mandatory agreement of the victim in this regard and certain minimum benefits must be

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[18] Resolution of the Council of 10 June 2011 on a Roadmap for strengthening the rights and protection of victims, in particular in criminal proceedings (2011/C 187/01). OJEU C 187, 28.6.2011.

[19] Directive 2012/29/EU of the European Parliament and of the Council of 25 October establishing minimum standards on the rights, support and protection of victims of crime. OJEU L 315 of the 14.11.2012. Notwithstanding the deadline for transposition to internal Law, this regulation is intended to replace Council Framework Decision 2001/220/JHA on the standing of victims in criminal proceedings.

[20] Proposal for a Regulation of the European Parliament and of the Council on mutual recognition of protection measures in civil matters. COM (2011) 276 final, 18.5.2011.

guaranteed, consisting of material assistance and medical and/or psychological assistance; the intervention of a translator and interpreter; counselling on possible international protection; and attending to special needs, including pregnancy, health problems, disability or mental or psychological disorders, age or the fact that the person has been a victim of serious violence.

Meanwhile, specific measures of protection are established in the context of the investigations and criminal proceedings, in relation to the following guarantees in particular:

- Legal counselling and representation, immediate and free of charge if applicable, so that the corresponding compensation can be applied for.
- Individual risk assessment, aimed at the adoption of witness protection measures where appropriate.
- Preventing secondary victimisation, by avoiding unnecessary interviews, giving evidence in open court, contact with the aggressor or questions about the victim's private life.
- Particular attention is given to child victims, with specific support and the intervention of professionals with the proper training.

Finally, it is worth mentioning that Ireland has declared its intention to participate in the procedure for the adoption and application of this rule, while the United Kingdom and Denmark have opted out.

Meanwhile, at the initiative of certain Member States[21] and following an eventful passage, the European Parliament and the Council recently approved –on 13 December last– the above-mentioned **directive on the European protection order**, setting a term of three years for transposition to the domestic legal systems as of its entry into force. This period ends on 11 January 2015.

This provision seeks the application of the principle of mutual recognition in relation to protection measures adopted by Member States in relation to the victims of violent

[21] Belgium, Bulgaria, Estonia, Finland, France, Hungary, Italy, Poland, Portugal, Romania, Spain, Sweden and United Kingdom.

crime, in such a way that said measures are effective in any country in the territory of the EU when the victim is to travel to the same. In this case, the United Kingdom has accepted these provisions, falling within its scope, with Ireland and Denmark opting out.

As for the objective scope of this instrument, automatic recognition applies exclusively to measures of a criminal nature –be they provisional, security or protection– and that imply a restriction of the liberty of the person causing the danger. As such, it covers restraining orders, prohibitions on communication and prohibitions on entering certain places, provided they have been adopted in criminal proceedings brought in order to clarify certain offences, as it restricts the cases of crimes to those that can endanger a person's life, physical or psychological integrity, dignity, individual freedom or sexual integrity.

In order to process a European protection order, each state will designate specific authorities for issuing, receiving, recognising and executing the same, and central authorities may also be established in this regard.

With regard to the procedure, the issue of a European protection order will take place at the request of the victim in whose favour a protection measure has been adopted in the context of criminal proceedings and who decides to travel to another country within the European Union. Upon receipt of the request, the body of the issuing state will examine whether the requirements are met, hear the person causing the danger and, if applicable, adopt a European protection order, filling out the corresponding form in a language accepted by the executing state. Said form makes reference to the following aspects:

- Issuing authority.
- Identification of the protected person and the person causing the damage.
- Protection measure adopted and the envisaged term of validity.
- Summary of essential circumstances and facts of the case.
- Content of the prohibition, restrictions and use, if applicable, of technical supervision measures.

- Penalty envisaged in the case of a breach.

The documentation will be sent to the competent authority of the executing state by any means which leaves a written record so as to allow the competent authority of the executing State to establish its authenticity. Once the request is received, the authority of the executing state will examine its content, request complementary information where applicable and immediately issue the corresponding decision in order to execute the measures envisaged. It will then inform the issuing authority, protected person and person causing the damage of the measures adopted, with the executing state assuming any expenses that may derive. The following are the listed grounds for non-recognition:

- The order is not complete or has not been duly remedied.
- The requirements for automatic recognition have not been met.
- The protection measure relates to an act that does not constitute a criminal offence under the law of the executing State.
- There is immunity conferred under the law of the executing State on the person causing danger.
- The offence is statute-barred under the law of the executing State, when the act or the conduct falls within its competence.
- Contravention of the *non bis in idem* principle.
- The person causing the danger cannot be held criminally liable in the executing State because of his/her age.
- The offence was committed for a major or essential part in the territory of the executing state.

Finally, reference is made to the possible breach of the measures, in which case the executing authority can apply its national law or inform the issuing authority so that it can adopt an appropriate decision.

In any event, EU intervention does not end on this point with the measures already established, the adoption of new provisions offering greater protection to the victims of

crime is envisaged.

This legislative orientation was clearly expressed by **Resolution of the Council of 10 June 2011 on a Roadmap for strengthening the rights and protection of victims, in particular in criminal proceedings**. The premise for this text is that free movement has led to an increase in crime victims who are not resident in the Member State where the offence was committed, a situation which requires progress in the standard rules on the protection of the injured party and his/her rights in the context of criminal proceedings.

We have already seen how the Stockholm Programme set out lines of work for the current period, using the plan envisaged for guaranteeing the rights of accused persons as a model, and it promoted this roadmap that affects the need to update and complete the existing texts regarding the standing of victims and the means of providing compensation for victims (dating from 2001 and 2004 respectively). Moreover, it is essential to promote mutual recognition in relation to the protection measures adopted in favour of victims, all of which are complex questions. In line with this perspective, a gradual approach to the subject matter is advised in order to maintain the consistency of the whole.

This being the state of affairs, the Council recovers the aims, rights and guarantees contained in the standing of victims and proposes to advance in the achievement of the same by means of the adoption of the following regulatory instruments:

- Measure A: a directive that replaces the framework decision on the standing of victims, revising, completing and increasing the level of protection.
- Measure B: practical recommendations in relation to said directive by preparing a best practice guide.
- Measure C: a Regulation on mutual recognition of protection measures for victims taken in civil matters.
- Measure D: a review of the directive on compensation to victims in order to simplify the procedures for claiming it.

- Measure E: address the special needs of the most vulnerable victims in the context of a directive on their standing.

In execution of the roadmap, in May 2011 the Commission launched a proposal for **a Directive establishing minimum standards on the rights, support and protection of victims of crime**. This project was considered high priority and was definitively ratified last October, envisaging a transposition period of three years and establishing the general objective of all crime victims receiving proper protection and support, being able to participate in the corresponding criminal proceedings and being recognised and treated in a respectful, sensitive and professional manner without suffering any discrimination. In any event, it is noteworthy that only Denmark has opted out, whilst the United Kingdom and Ireland have expressed their wish to participate in the adoption and implementation of this project.

For our purposes, we should highlight that it advances and goes into the rights recognised to victims in greater depth, introducing higher levels of protection. Thus, it stresses the right to receive information as of the first contact with a competent authority, extending the provisions of the existing standing of victims, to include the following aspects, among others:

- The right to receive compensation and the terms for applying for it.
- The possible existence of special support measures for citizens who are resident in another Member State.
- Complaint procedures where rights have been infringed.

Meanwhile, and in line with the directive on the right to interpretation and translation in criminal proceedings, in order to guarantee the assistance of a translator and interpreter if necessary (and free of charge in any event), it imposes the obligation on the Member States to establish a mechanism in their national legal systems to determine the need for the intervention of these professionals. Likewise, it confirms the mandatory intervention of the interpreter in all oral proceedings and the necessary translation of essential case documents (complaint, information for exercising rights, final decision). Moreover, it must be possible to challenge the denial of these services, as well as to complain due to the poor quality of the same.

On another point, certain specifications are introduced in certain rights and guarantees already enshrined in general terms:

- Free of charge, confidential support service.
- Safeguards in the context of mediation and other restorative justice services (voluntary and confidential nature).
- Reimbursement of expenses and return of property.
- Legal aid in accordance with national rules.
- Special attention for victims resident in another Member State (immediate taking of statement, avoid further travel, the possibility of making the complaint before the authorities in its place of residence).
- Procedures for the identification of particularly vulnerable victims.

Here, all that is left for us to do is to refer to the **Proposal for a Regulation on mutual recognition of protection measures in civil matters**, presented by the Commission on 18 May 2011 and also considered high priority. The last of the instruments promoted to date, and the only pending definitive ratification, addresses the implementation of the principle of mutual recognition in relation to the civil measures adopted regarding victims in order to protect their freedom or physical or psychological integrity (restraining order, prohibition on communication, prohibition on entering places or allocation of use of the shared residence, among other things).

In this regard, it will be sufficient to send the corresponding certificate, without authorising a review of the merits, and allowing refusal only in the event it is incompatible with an earlier decision adopted in the recipient Member State.

It should be taken into account that the kind of instrument chosen in this case does not require transposition to domestic legal systems, as it is a regulation and is directly applicable once it enters into force, which is scheduled for a date 12 months after its publication.

This concludes our analysis of the different existing initiatives, drawing a close to this section, notwithstanding the fact that it is an ongoing process to which new projects will be added in accordance existing roadmap.

4. THE PROTECTION OF PERSONAL DATA

According to the proposition set out in the introduction to this unit, having reached this point, all that remains for us to do is analyse the measures adopted to safeguard citizens' right to privacy, from the perspective of the right to the protection of the personal data of individuals handled in the context of investigations and other criminal proceedings.

In relation to this area, the starting point is the **framework decision on the protection of personal data processed in the framework of police and judicial cooperation in criminal matters**[22], which dates from 2008 and whose term for transposition concluded on 27 November 2010. This instrument was born of a desire to combine a high level of public security with proper protection of individuals' right to privacy, establishing mechanisms of control in relation to the processing of personal data in a sphere excluded from the general regulation[23].

In this regard, this instrument obliges the Member States to protect the fundamental rights of citizens, in particular the right to privacy, when personal data is transmitted or included in information systems in the context of investigations or criminal proceedings (investigation, prosecution, enforcement).

In this regard, it is born of the obsession with the essential principles applicable to the gathering and processing of data (lawfulness, proportionality, finality, confidentiality, security); enshrines the rights of the individuals affect in this regard (information, access, rectification, erasure, blocking and repair); and envisages the imposition of penalties in the event of breach (effective, proportionate and deterrent).

On the other hand, it stresses the protection of certain information by establishing certain categories of data (racial or ethnic origin, political ideology, religious or

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[22] Council Framework Decision 2008/977/JHA of 27 November 2008 on the protection of personal data processed in the framework of police and judicial cooperation in criminal matters. OJEU L 350, 30.12.2008.

[23] As the basic instrument in this field, Directive 95/46/EC of the European Parliament and of the Council of 24 October 1995 on the protection of individuals with regard to the processing of personal data and on the free movement of such data (OJEU L 281, 23.11.1995; amended by 32003R1882, consolidated text 01995L0046-20031120) expressly excludes "State activities relating to the area of criminal law" (Article 3.2).

philosophical beliefs, trade union membership, health, sex life), the processing of which will only be authorised on an exceptional basis, once it has been confirmed that it is strictly necessary and provided appropriate guarantees are adopted.

All in all, the framework decision establishes important conditions that highlight the insufficiency of its provisions with a view to effective protection. In this regard, at least the following implicit limitations in its articles should be taken into account:

- It is not a replacement for sector-specific instruments on Europol, Eurojust or the Schengen Information System.
- Exceptions are made to the application of the same in those cases in which essential state security or intelligence activities are affected.
- It only regulates the cross-border exchange of personal data in the Community sphere or with third countries or international bodies, but not the internal processing operations of the Member States.

The relevance of these restrictions –the latter in particular– meant that, as it stated at the time, the Stockholm Programme set out ambitious aims in this field that were duly specified by the Action Plan currently being executed. Following the path marked in said blueprint, in 2010 the Commission itself pushed for the revision of the rules on data protection with a view to establishing a coherent, comprehensive system both on a strictly community level and in relation to third countries[24].

In any event, the co-existence of a general regime with special features for criminal matters is accepted, so as not to compromise the prevention, investigation, detection and persecution of offences. And in line with this approach, two parallel, closely linked initiatives have recently been launched which address the establishment of a common framework and the establishment of special features for criminal matters, respectively: a **proposal for a General Data Protection Regulation**[25] and a **proposal for a directive with regard to the processing of personal data in the context of**

[24] Communication from the Commission to the European Parliament, the Council, the Economic and Social Committee and the Committee of the Regions. A comprehensive approach on personal data protection in the European Union. COM (2010) 609 final, 4 November 2010.

[25] Proposal for a Regulation of the European Parliament and of the Council on the protection of individuals with regard to the processing of personal data and on the free movement of such data (General Data Protection Regulation). COM(2012) 11 final, 25.01.2012.

investigations and criminal proceedings[26].

This being the case, the regulation expressly rules out its application when the processing of personal data is performed by the competent authorities for the purposes of the prevention, investigation, detection or prosecution of criminal offences or the execution of criminal penalties (Article 2.2.e), and this vacuum is immediately filled with the proposal for a directive (Article 1)[27], the content of which we will analyse below.

In view of the territorial scope, it will come as no surprise that it does not include Denmark under any circumstances, but in the case of Ireland and the United Kingdom, it is noteworthy that a somewhat blurred casuistic regime is established, albeit it is consistent with the unique status of these states in relation to such matters. Thus, it is stated that the provisions of this directive will only be binding for these two countries insofar as the community rules regulating forms of police and judicial cooperation are, in the context of which the provisions established must be respected; matters will have to be assessed on a case-by-case basis.

This regulatory instrument aspires to go into the protection of rights in greater depth, in a manner that is effective and compatible with security, in such a way that it extends the basic principles that must regulate data processing –namely: lawfulness and fairness; specified, explicit and legitimate purposes; adequate, relevant, accurate, up to date and not excessive; kept for no longer than it is necessary; responsibility and liability for processing– while at the same time thoroughly defining the cases where such processing will be lawful:

- for the performance of a task carried out by a competent authority, based on law, for the prevention, investigation, detection or prosecution of criminal offences or the execution of criminal penalties.
- for compliance with a legal obligation to which the controller is subject.

[26] Proposal for a Directive of the European Parliament and of the Council on the protection of individuals with regard to the processing of personal data b0y competent authorities for the purposes of prevention, investigation, detection or prosecution of criminal offences or the execution of criminal penalties, and the free movement of such data. COM(2012) 10 final, 25.01.2012.

[27] The entry into force of which will also represent repealing the 2008 framework decision and that, in any event, it is not applicable to national security or the processing of data by the institutions, organs and bodies of the Union either.

- in order to protect the vital interests of persons.
- for the prevention of an immediate and serious threat to public security.

Moreover, the different categories of interested parties are dealt with individually (accused persons, sentenced persons, victims, witnesses and other data subjects) and new guarantees linked to the corresponding rights are explored (information, access, rectification, erasure, blocking and repair), imposing the corresponding specific obligations on the controller.

On this point, it is worth highlighting the need to implement the technical measures necessary to control access to and conservation, communication and transport of data and to ensure the recovery, reliability and integrity of the same. With the same vocation to establish safeguards, the instrument envisages the establishment of independent supervisory authorities in each state to oversee due respect for the provisions of the directive, setting out their duties and powers, as well as the essential conditions for guaranteeing their autonomy and freedom of operation.

Meanwhile, it establishes controls on the transfer of personal data to third countries or international organisations, restricting the cases in which such communication is considered necessary and conditioning it on compliance with a series of requirements in any event. Among these requirements, it is worth highlighting that, apart from some exceptions, the receiving country or organisation must have been considered appropriate in this regard by the Commission itself, once it is considered to guarantee an appropriate level of protection.

Finally, it is merely worth reiterating that it is a project that has yet to receive final approval[28] and in relation to the same a term of two years as of entry into force is set for transposition to the domestic legal systems.

[28] With regards to the status of the processing, we might draw attention to the fact that the Irish Presidency of the EU considers this initiative to be a priority issue and hopes to reach a definitive agreement prior to the conclusion of its term of office (June 2013)

5. CONCLUSIONS

FIRST.- Mutual trust between Member States is the basic premise for the effective implementation of the principle of mutual recognition of judicial decisions in the EU sphere, both in relation to their legal systems and the application of the same.

SECOND.- This reliability cannot be simply taken on faith; it must be based on specific provisions that provide clear guarantees that essential procedural principles will be respected and that the institutions function correctly, particularly in the case of the criminal justice system as it significantly affects the individual freedoms of citizens.

THIRD.- In line with these approaches, plans are afoot to execute an ambitious legislative programme in the 2010-2014 period which contemplates several initiatives in this regard, affecting, among other things, the main procedural guarantees of suspected and accused persons in criminal proceedings; the rights of victims of crime; and the protection of the personal data handled in the context of criminal investigations and legal proceedings.

FOURTH.- The strategy designed in this regard seeks an approximation of domestic rules in order to harmonise practices, establishing minimum standards in relation to certain rights and guarantees, which must be assumed by the domestic legal systems by means of the corresponding transposition.

FIFTH.- Starting with the procedural guarantees that –according to the provisions of the European Convention on Human Rights– must be recognised for all suspected or accused persons in criminal proceedings, each of the different rights are addressed individually. As a result of this line of work, we now have two directives (one relating to the right to interpretation and translation, and one relating to the right to information) and a third project, relating to the right to legal advice and the right to communication upon arrest, that is being processed .

SIXTH.- At present, the institutional work aimed at the harmonisation of the rights and guarantees of crime victims involves the development of specific instruments that update and extend the existing provisions. In this regard, three directives have been approved: the first outlines minimum standards in relation to the victims of trafficking in

human beings; the second regulates the European protection order in relation to certain criminal measures; whilst the third addresses the rights, support and protection of victims of crime (representing a new framework for reference intended to substitute the current directive on the standing of victims in criminal proceedings). Furthermore, work is being carried out on another project, as part of a broader action plan intended to bring about the application of the principle of mutual recognition within civil matters.

SEVENTH.- Proper protection of personal data in the context of investigations and criminal proceedings must be compatible with a high degree of public security. The combination of these apparently opposing interests is the ultimate aim of a proposal for a directive currently in the pipeline, which increases citizens' guarantees while at the same time seeking to avoid hindering the persecution and repression of crime.

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11th of February 2013