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Committee on Civil Liberties, Justice and Home Affairs

2013/0409(COD)

03.2.2015

AMENDMENTS

34 - 154

Draft report
Dennis de Jong
(PE544.135v01-00)

on the proposal for a directive of the European Parliament and of the Council
on provisional legal aid for suspects or accused persons deprived of liberty and
legal aid in European arrest warrant proceedings

Proposal for a directive
(COM(2013)0824 – C7-0429/2013 – 2013/0409(COD))

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EN

United in diversity

EN

Amendment 34
Birgit Sippel, Sylvia-Yvonne Kaufmann

Proposal for a directive
Title 1

Text proposed by the Commission

Proposal for a
DIRECTIVE OF THE EUROPEAN
PARLIAMENT AND OF THE COUNCIL
on *provisional* legal aid for suspects or
accused persons *deprived of liberty* and
legal aid in European arrest warrant
proceedings

Amendment

Proposal for a
DIRECTIVE OF THE EUROPEAN
PARLIAMENT AND OF THE COUNCIL
on legal aid for suspects or accused persons
and legal aid in European arrest warrant
proceedings

Or. en

Amendment 35
Rachida Dati

Proposal for a directive
Title 1

Text proposed by the Commission

Proposal for a
DIRECTIVE OF THE EUROPEAN
PARLIAMENT AND OF THE COUNCIL
on *provisional* legal aid for suspects or
accused persons deprived of liberty and
legal aid in European arrest warrant
proceedings

Amendment

Proposal for a
DIRECTIVE OF THE EUROPEAN
PARLIAMENT AND OF THE COUNCIL
on legal aid for suspects or accused persons
deprived of liberty and legal aid in
European arrest warrant proceedings

Or. fr

Justification

In order to guarantee the right to due process throughout criminal proceedings and to enhance mutual trust between Member States in each other's criminal justice systems, the scope of this directive should be extended to include ordinary legal aid for suspects and

accused persons who are deprived of liberty.

Amendment 36

Laura Ferrara, Ignazio Corrao

Proposal for a directive

Title 1

Text proposed by the Commission

Proposal for a
DIRECTIVE OF THE EUROPEAN
PARLIAMENT AND OF THE COUNCIL
on provisional legal aid for suspects or
accused persons ***deprived of liberty*** and
legal aid in European arrest warrant
proceedings

Amendment

Proposal for a
DIRECTIVE OF THE EUROPEAN
PARLIAMENT AND OF THE COUNCIL
on provisional legal aid for suspects or
accused persons and legal aid in European
arrest warrant proceedings

Or. it

Amendment 37

Rachida Dati

Proposal for a directive

Recital 1

Text proposed by the Commission

(1) The purpose of this Directive is to ensure the effectiveness of the right of access to a lawyer by providing assistance by the Member States for persons deprived of liberty at ***an early stage*** in the criminal proceedings and for requested persons in surrender procedures pursuant to Council Framework Decision 2002/584/JHA¹¹ (European arrest warrant proceedings).

Amendment

(1) The purpose of this Directive is to ensure the effectiveness of the right of access to a lawyer by providing assistance by the Member States for persons deprived of liberty at ***the earliest stages*** in the criminal proceedings and for requested persons in surrender procedures pursuant to Council Framework Decision 2002/584/JHA¹¹ (European arrest warrant proceedings).

¹¹ Council Framework Decision 2002/584/JHA of 13 June 2002 on the European arrest warrant and the surrender procedures between Member States (OJ L

¹¹ Council Framework Decision 2002/584/JHA of 13 June 2002 on the European arrest warrant and the surrender procedures between Member States (OJ L

Amendment 38
Rachida Dati, Pál Csáky

Proposal for a directive
Recital 2

Text proposed by the Commission

(2) By establishing minimum rules on the protection of procedural rights of suspects or accused persons, this Directive should strengthen the trust of Member State in criminal justice systems of other Member States and can thus help improve mutual recognition of decisions in criminal matters.

Amendment

(2) By establishing minimum rules on the protection of procedural rights of suspects or accused persons, this Directive should strengthen the trust of Member State in criminal justice systems of other Member States and can thus help improve mutual recognition of decisions in criminal matters ***in order to achieve more effective judicial cooperation within the Union. This Directive seeks to strengthen legal certainty for suspects and accused persons who are deprived of liberty during criminal proceedings.***

Justification

Legal certainty for suspects and accused persons who are deprived of liberty must be at the heart of this Directive.

Amendment 39
Rachida Dati

Proposal for a directive
Recital 2 a (new)

Text proposed by the Commission

Amendment

(2a) In accordance with Article 82(2) of the Treaty on the Functioning of the

European Union (TFEU), to the extent to which it is 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 cover in particular the rights of individuals in criminal procedure.

Or. fr

Justification

Reference should be made to the European Union's competence in criminal justice and the legal basis on which this directive is based. In accordance with Article 82(2) of the TFEU, the European Union is competent to legislate in this area.

Amendment 40
Rachida Dati, Pál Csáky

Proposal for a directive
Recital 3 a (new)

Text proposed by the Commission

Amendment

(3a) On 30 November 2009, the Council adopted a resolution on a Roadmap for strengthening procedural rights of suspected or accused persons in criminal proceedings. It is proposing to introduce several legislative initiatives including the right to the assistance of a legal adviser and legal aid in criminal proceedings (measure C).

Or. fr

Justification

This directive is part of a general set of legislative measures set out by the Roadmap for strengthening procedural rights of suspected or accused persons in criminal proceedings, adopted on 30 November 2009.

Amendment 41

Rachida Dati, Pál Csáky

Proposal for a directive

Recital 4

Text proposed by the Commission

(4) Three measures on procedural rights in criminal proceedings have been adopted to date, namely Directive 2010/64/EU of the European Parliament and of the Council¹⁴, Directive 2012/13/EU of the European Parliament and of the Council¹⁵ and Directive 2013/48/EU of the European Parliament and the **Council**.¹⁶

¹⁴ 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 (OJ L 280, 26.10.2010, p. 1).

¹⁵ Directive 2012/13/EU of the European Parliament and of the Council of 22 May 2012 on the right to information in criminal proceedings (OJ L 142, 1.6.2012, p. 1.)

¹⁶ Directive 2013/48/EU of the European Parliament and of the Council of 22 October 2013 on the right of access to a lawyer in criminal proceedings and in European arrest warrant proceedings, and on the right to have a third party informed upon deprivation of liberty and to communicate with third persons and with consular authorities while deprived of

Amendment

(4) Three measures on procedural rights in criminal proceedings have been adopted to date, namely Directive 2010/64/EU of the European Parliament and of the Council¹⁴ **on the right to interpretation and translation**, Directive 2012/13/EU of the European Parliament and of the Council¹⁵ **on the right to information**, and Directive 2013/48/EU of the European Parliament and **of the Council⁶ on the right to access to a lawyer.**

¹⁴ 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 (OJ L 280, 26.10.2010, p. 1).

¹⁵ Directive 2012/13/EU of the European Parliament and of the Council of 22 May 2012 on the right to information in criminal proceedings (OJ L 142, 1.6.2012, p. 1.)

¹⁶ Directive 2013/48/EU of the European Parliament and of the Council of 22 October 2013 on the right of access to a lawyer in criminal proceedings and in European arrest warrant proceedings, and on the right to have a third party informed upon deprivation of liberty and to communicate with third persons and with consular authorities while deprived of

liberty (OJ L 294, 6.11.2013, p. 1).

liberty (OJ L 294, 6.11.2013, p. 1).

Or. fr

Amendment 42
Rachida Dati, Pál Csáky

Proposal for a directive
Recital 5

Text proposed by the Commission

(5) Legal aid should cover the costs of the defence and the proceedings for suspects or accused persons in criminal proceedings and requested persons in European arrest warrant proceedings.

Amendment

(5) Legal aid should cover, **fully or in part**, the costs of the defence and the proceedings for suspects or accused persons in criminal proceedings and requested persons in European arrest warrant proceedings.

Or. fr

Justification

Addition of the words 'fully or in part' highlights the role of the Member States in establishing the arrangements for granting legal aid, in accordance with the principle of subsidiarity.

Amendment 43
Laura Ferrara, Ignazio Corrao

Proposal for a directive
Recital 6

Text proposed by the Commission

(6) The scope and content of the right to access to a lawyer are set out in Directive 2013/48/EU. A suspect or accused person in criminal proceedings should **have** the right of access to a lawyer from the time when they are made aware, by official notification or otherwise, by the competent authorities, that they are suspected or

Amendment

(6) The scope and content of the right to access to a lawyer are set out in Directive 2013/48/EU. A suspect or accused person in criminal proceedings should **be granted** the right of access to a lawyer from the time when they are made aware, by official notification or otherwise, by the competent authorities, that they are suspected or

accused of having committed a criminal offence, and irrespective of whether they are deprived of liberty. That right applies until the conclusion of the proceedings, which is understood to mean the final determination of the question whether the suspect or accused person has committed the offense, including where applicable, sentencing and the resolution of any appeal.

accused of having committed a criminal offence, and irrespective of whether they are deprived of liberty. That right applies until the conclusion of the proceedings, which is understood to mean the final determination of the question whether the suspect or accused person has committed the offense, including where applicable, sentencing and the resolution of any appeal.

Or. it

Amendment 44
Rachida Dati

Proposal for a directive
Recital 6 a (new)

Text proposed by the Commission

Amendment

(6a) In accordance with Directive 2013/48/EU, legal aid is provided within the Member States in accordance with the Charter of Fundamental Rights of the European Union (hereinafter referred to as ‘the Charter’ and the European Convention for the Protection of Human Rights and Fundamental Freedoms (ECHR). Where suspects or accused persons are deprived of liberty, Member States should make the necessary arrangements to ensure that such persons are in a position to exercise effectively their right of access to a lawyer, including by arranging for the assistance of a lawyer when the persons concerned do not have one, unless they have waived that right. Under this directive, such arrangements could include those on legal aid if applicable.

Or. fr

Justification

This directive is intended to ensure the effective implementation of Directive 2013/48/EU on the right of access to a lawyer, which states that the measures offering effective access to this right could include arrangements for legal aid.

Amendment 45

Timothy Kirkhope, Helga Stevens, Jussi Halla-aho
on behalf of the ECR Group

Proposal for a directive

Recital 7

Text proposed by the Commission

Amendment

(7) One of the fundamental features of a fair trial, as stated by the European Court of Human Rights ('ECtHR') is that everyone charged with a criminal offence is effectively defended by a lawyer, assigned officially if need be. The fairness of criminal proceedings requires that a suspect should be granted access to legal assistance from the moment of deprivation of liberty.

deleted

Or. en

Amendment 46

Rachida Dati

Proposal for a directive

Recital 8

Text proposed by the Commission

Amendment

(8) Directive 2013/48/EU provides that in cases where suspects or accused persons are deprived of liberty, Member States should make the necessary arrangements to ensure that they are in a position to exercise effectively their right of access to lawyer, unless they have waived this right.

deleted

Justification

This paragraph has been deleted because the points are covered in recital 6a.

Amendment 47

Laura Ferrara, Ignazio Corrao

Proposal for a directive

Recital 8

Text proposed by the Commission

Amendment

(8) Directive 2013/48/EU provides that in cases where suspects or accused persons are deprived of liberty, Member States should make the necessary arrangements to ensure that they are in a position to exercise effectively their right of access to lawyer, unless they have waived this right.

deleted

Or. it

Amendment 48

Pál Csáky, Michał Boni, Kinga Gál, Csaba Sógor, Tomáš Zdechovský, Elissavet Vozemberg

Proposal for a directive

Recital 8 a (new)

Text proposed by the Commission

Amendment

(8 a) In some Member States certain minor offences, in particular minor traffic offences, minor offences in relation to general municipal regulations and minor public order offences, are considered to be criminal offences. In such situations, it would be unreasonable to require that the competent authorities ensure all the rights under this Directive. Where the law of a Member State provides in respect of minor offences that deprivation of liberty

cannot be imposed as a sanction, this Directive should therefore apply only to the proceedings before a court having jurisdiction in criminal matters.

Or. en

Amendment 49
Birgit Sippel, Sylvia-Yvonne Kaufmann

Proposal for a directive
Recital 9

Text proposed by the Commission

(9) In order for suspects or accused persons ***who are deprived of liberty*** to be in a position to exercise effectively the right of access to a lawyer at the early stages of the proceedings, they should not have to wait for access to a lawyer pending the processing of the application for legal aid and the assessment of the eligibility criteria for legal aid. Member States should therefore ensure that effective provisional legal aid is available without undue delay ***after the deprivation of liberty and*** before any questioning, and it should be available at least until the competent authority has taken the decision on legal aid and, in cases of full or partial rejection, this decision has become final, or, where the application for legal aid is granted, the appointment of the lawyer by the competent authority has taken effect.

Amendment

(9) In order for suspects or accused persons ***in criminal proceedings*** to be in a position to exercise effectively the right of access to a lawyer at the early stages of the proceedings, they should not have to wait for access to a lawyer pending the processing of the application for legal aid and the assessment of the eligibility criteria for legal aid. Member States should therefore ensure that effective provisional legal aid is available without undue delay ***from the time that they are made aware by the competent authorities of a Member State, by official notification or otherwise, that they are suspected or accused of having committed a criminal offence and in any event*** before any questioning, and it should be available at least until the competent authority has taken the decision on legal aid and, in cases of full or partial rejection, this decision has become final, or, where the application for legal aid is granted, the appointment of the lawyer by the competent authority has taken effect.

Or. en

Amendment 50
Axel Voss

Proposal for a directive
Recital 9

Text proposed by the Commission

(9) In order for suspects or accused persons who are deprived of liberty to be in a position to exercise effectively the right of access to a lawyer ***at the early stages of the proceedings, they should not have to wait for access to a lawyer pending the processing of the application for legal aid and the assessment of the eligibility criteria for legal aid.*** Member States should therefore ensure that ***effective*** provisional legal aid is available ***without undue delay after the deprivation of liberty and before any questioning, and it should be available at least*** until the competent ***authority has*** taken ***the*** decision on legal aid ***and, in cases of full or partial rejection, this decision has become final, or, where the application for legal aid is granted, the appointment of the lawyer by the competent authority has taken effect.***

Amendment

(9) In order for suspects or accused persons who are deprived of liberty to be in a position to exercise effectively the right of access to a lawyer, Member States should therefore ensure that provisional legal aid is available ***until the person concerned is released or*** until the competent ***authorities have*** taken ***a final*** decision on ***ordinary*** legal aid. ***Exceptions should be made for the situations listed in Article 2.***

Or. de

Justification

This amendment is needed in order to bring Recital 11 into line with Articles 3 and 4. The exceptions are listed in Amendment 4.

Amendment 51
Rachida Dati

Proposal for a directive
Recital 9

Text proposed by the Commission

(9) In order for suspects or accused persons who are deprived of liberty to be in a position to exercise effectively the right of

Amendment

(9) In order for suspects or accused persons who are deprived of liberty to be in a position to exercise effectively the right of

access to a lawyer at the early stages of the proceedings, they should not have to wait for access to a lawyer pending the processing of the application for legal aid and the assessment of the eligibility criteria for legal aid. Member States should therefore ensure that effective provisional legal aid is available without undue delay after the deprivation of liberty and before any questioning, and it should be available at least until the competent authority has taken the decision on legal aid and, in cases of full or partial rejection, this decision has become final, or, where the application for legal aid is granted, the appointment of the lawyer by the competent authority has taken effect.

access to a lawyer at the early stages of the proceedings, they should not have to wait for access to a lawyer pending the processing of the application for **ordinary** legal aid and the assessment of the eligibility criteria for **ordinary** legal aid. ***Suspects and accused persons who are deprived of liberty are particularly vulnerable during the very early stages of criminal proceedings.*** Member States should therefore ensure that effective provisional legal aid is available without undue delay after the deprivation of liberty and before any questioning, and it should be available at least until the competent authority has taken the decision on legal aid and, in cases of full or partial rejection, this decision has become final, or, where the application for legal aid is granted, the appointment of the lawyer by the competent authority has taken effect.

Or. fr

Justification

Provisions for provisional legal aid are of particular importance in view of the vulnerable situation in which suspects and accused persons who are deprived of their liberty find themselves in the earliest stages of criminal proceedings. That is why it is essential that suspects or accused persons can have access to legal aid without undue delay after they have been deprived of their liberty.

Amendment 52

Laura Ferrara, Ignazio Corrao

Proposal for a directive

Recital 9

Text proposed by the Commission

(9) In order for suspects or accused persons ***who are deprived of liberty*** to be in a position to exercise effectively the right of access to a lawyer at the early stages of the proceedings, they should not have to wait

Amendment

(9) In order for suspects or accused persons to be in a position to exercise effectively the right of access to a lawyer at the early stages of the proceedings, they should not have to wait for access to a lawyer pending

for access to a lawyer pending the processing of the application for legal aid and the assessment of the eligibility criteria for legal aid. Member States should therefore ensure that effective provisional legal aid is available without undue delay **after the deprivation of liberty and** before any **questioning**, and it should be available at least until the competent authority has taken the decision on legal aid and, in cases of full or partial rejection, this decision has become final, or, where the application for legal aid is granted, the appointment of the lawyer by the competent authority has taken effect.

the processing of the application for legal aid and the assessment of the eligibility criteria for legal aid. Member States should therefore ensure that effective provisional legal aid is available without undue delay before **the performance of any procedural step which, under national or European law, has to be carried out in the presence of a lawyer**, and it should be available at least until the competent authority has taken the decision on legal aid and, in cases of full or partial rejection, this decision has become final, or, where the application for legal aid is granted, the appointment of the lawyer by the competent authority has taken effect.

Or. it

Amendment 53
Heinz K. Becker

Proposal for a directive
Recital 9 a (new)

Text proposed by the Commission

Amendment

(9a) It would be going too far to provide for a right to provisional legal aid in connection with minor offences, in particular under the administrative law, such as traffic offences. The right to provisional legal aid should therefore not apply in cases where, under national law, authorities other than the ordinary courts have the power to impose penalties for such minor offences.

Or. de

Justification

In some Member States minor offences, such as traffic offences, are not dealt with by the ordinary courts. It would be disproportionate to lay down a right to legal aid in such cases, which should therefore be excluded from the scope of the directive.

Amendment 54
Rachida Dati, Pál Csáky

Proposal for a directive
Recital 9 a (new)

Text proposed by the Commission

Amendment

(9a) This directive should allow for differences in the EU Member States' legal aid systems. Each Member State shall be responsible for the granting of legal aid, which shall be allocated subject to an assessment of financial means (means test) and/or whether it is in the interests of justice to provide aid in the case concerned (merits test).

Or. fr

Justification

The directive must respect national sovereignty. It is not the EU's responsibility to decide how legal aid should be granted within the Member States.

Amendment 55
Heinz K. Becker

Proposal for a directive
Recital 9 b (new)

Text proposed by the Commission

Amendment

(9b) Brief curtailments of personal liberty, for example in the form of a court summons to appear as a witness or an order by the police to stop for the purposes of an identity check or a search, should not be regarded as deprivation of liberty within the meaning of this Directive and should therefore be excluded from its scope.

Justification

Situations in which a person's absolute liberty is briefly curtailed, for example if they are summonsed to appear in court as a witness or are spontaneously stopped by the police for the purposes of an identity check or a search for illegal drugs or weapons, should be excluded from the scope of the directive.

Amendment 56
Rachida Dati

Proposal for a directive
Recital 10

Text proposed by the Commission

(10) The Member States should ensure that **provisional** legal aid is provided to the extent necessary and is not limited in a way that prevents the suspects or accused persons from exercising effectively the right of access to a lawyer as provided for in particular in Article 3(3) of Directive 2013/48/EU.

Amendment

(10) The Member States should ensure that legal aid is provided to the extent necessary and is not limited in a way that prevents the suspects or accused persons from exercising effectively the right of access to a lawyer as provided for in particular in Article 3(3) of Directive 2013/48/EU.

Justification

In order to guarantee the right to due process throughout criminal proceedings and to enhance mutual trust between Member States in each other's criminal justice systems, the scope of this directive should be extended to include ordinary legal aid for suspects and accused persons who are deprived of liberty.

Amendment 57
Axel Voss

Proposal for a directive
Recital 11

Text proposed by the Commission

(11) Requested persons in European arrest warrant proceedings who are deprived of

Amendment

(11) Requested persons in European arrest warrant proceedings who are deprived of

liberty should have the right to provisional legal aid upon deprivation of liberty in the executing Member State, **at least** until the competent **authority has** taken **the** decision on legal aid **and, in cases of full or partial rejection, that decision has become final, or, where the application for legal aid is granted, the appointment of the lawyer by the competent authority has taken effect.**

liberty should have the right to provisional legal aid upon deprivation of liberty in the executing Member State **until they are released or** until the competent **authorities have** taken **a** decision on **ordinary** legal aid. **Exceptions should be made for the situations listed in Article 2.**

Or. de

Justification

This amendment is needed in order to bring Recital 11 into line with Articles 3 and 4. The exceptions are listed in Amendment 4.

Amendment 58

Laura Ferrara, Ignazio Corrao

Proposal for a directive Recital 11

Text proposed by the Commission

(11) Requested persons in European arrest warrant proceedings **who are deprived of liberty** should have the right to provisional legal aid upon deprivation of liberty in the executing Member State, at least until the competent authority has taken the decision on legal aid and, in cases of full or partial rejection, that decision has become final, or, where the application for legal aid is granted, the appointment of the lawyer by the competent authority has taken effect.

Amendment

(11) Requested persons in European arrest warrant proceedings should have the right to provisional legal aid upon deprivation of liberty in the executing Member State, at least until the competent authority has taken the decision on legal aid and, in cases of full or partial rejection, that decision has become final, or, where the application for legal aid is granted, the appointment of the lawyer by the competent authority has taken effect.

Or. it

Amendment 59

Pál Csáky, Kinga Gál, Csaba Sógor, Tomáš Zdechovský

**Proposal for a directive
Recital 11 a (new)**

Text proposed by the Commission

Amendment

(11 a) Without prejudice to the right to a fair trial, in case of short term deprivation of liberty for less serious offences, Member States may provide in their legislation for the possibility to limit granting provisional legal aid to cases where this is required by the interests of justice. Whether this is the case shall be assessed by the competent authorities without undue delay upon the deprivation of liberty and at the latest before questioning.

Or. en

**Amendment 60
Elissavet Vozemberg**

**Proposal for a directive
Recital 11 a (new)**

Text proposed by the Commission

Amendment

(11 a) Without prejudice to the right to a fair trial and to the requirements of the interests of justice, in case of less serious offences, Member States may provide in their legislation for the possibility to limit granting provisional legal aid in those cases. Whether this is the case shall be assessed by the competent authorities without undue delay upon the deprivation of liberty and at the latest before questioning.

Or. en

**Amendment 61
Judith Sargentini**

Proposal for a directive
Recital 12

Text proposed by the Commission

Amendment

(12) Member States should be able to provide that the costs relating to provisional legal aid for suspects or accused persons deprived of liberty and costs relating to provisional legal aid for requested persons can be recovered from those persons if, in the subsequent assessment of whether they have a right to legal aid, they are found to not meet the criteria to benefit from legal aid under national law.

deleted

Or. en

Justification

This paragraph should be deleted, as it would seriously inhibit effective access to legal assistance

Amendment 62
Birgit Sippel, Sylvia-Yvonne Kaufmann

Proposal for a directive
Recital 12

Text proposed by the Commission

Amendment

(12) Member States should be able to provide that the costs relating to provisional legal aid for suspects or accused persons **deprived of liberty** and costs relating to provisional legal aid for requested persons **can** be recovered from those persons if, in the subsequent assessment of whether they have a right to legal aid, they are found to not meet the criteria to benefit from legal aid under national law.

(12) Member States should be able to provide that the costs relating to provisional legal aid for suspects or accused persons and costs relating to provisional legal aid for requested persons **may** be recovered from those persons if, in the subsequent assessment **by the competent authority** of whether they have a right to legal aid, they are found to not meet the criteria to benefit from legal aid under national law, **and if they knowingly provided the competent authorities with**

false information on their personal financial situation. In order to ensure that any recovery of costs relating to provisional legal aid does not prejudice the suspect or accused person in such a way as to undermine the overall fairness of the proceedings, Member States should ensure that the conditions attached to recovery of costs are clear and reasonable and take account of the specific financial situation of the suspect or accused person.

Or. en

Amendment 63

Timothy Kirkhope, Helga Stevens, Jussi Halla-aho
on behalf of the ECR Group

Proposal for a directive **Recital 12**

Text proposed by the Commission

(12) Member States should be able to provide that the costs relating to provisional legal aid for suspects or accused persons deprived of liberty and costs relating to provisional legal aid for requested persons can be recovered from those persons if, in the subsequent assessment of whether they have a right to legal aid, they are found to not meet the criteria to benefit from legal aid under national law.

Amendment

(12) Member States should be able to provide that the costs relating to provisional legal aid for suspects or accused persons deprived of liberty and costs relating to provisional legal aid for requested persons can be recovered from those persons if, in the subsequent assessment of *the competent authority of* whether they have a right to legal aid, they are found to not meet the criteria to benefit from legal aid under national law.

Or. en

Amendment 64

Laura Ferrara, Ignazio Corrao

Proposal for a directive **Recital 12**

Text proposed by the Commission

(12) Member States should be able to provide that the costs relating to provisional legal aid for suspects or accused persons deprived of liberty and costs relating to provisional legal aid for requested persons can be recovered from those persons if, in the subsequent assessment of whether they have a right to legal aid, **they are** found to not meet the criteria **to benefit from legal aid under** national law.

Amendment

(12) Member States should be able to provide that the costs relating to provisional legal aid for suspects or accused persons deprived of liberty and costs relating to provisional legal aid for requested persons may be recovered from those persons if, in the subsequent assessment by the competent authority of whether they have a right to ordinary legal aid, **the final decision on legal aid is** found to not meet the criteria **laid down by** national law.

Or. it

Amendment 65
Rachida Dati

Proposal for a directive
Recital 13

Text proposed by the Commission

(13) To ensure the effective access to a lawyer in the executing Member State for requested persons, Member States should ensure that such persons have access to legal aid until the surrender, or, in cases of non-surrender, until the decision on surrender has become final. The right to legal aid may be subject to an assessment of the means of the requested person and/or whether it is in the interests of justice to provide legal aid, according to the applicable eligibility criteria in the executing Member State in question.

Amendment

(13) To ensure the effective access to a lawyer in the executing Member State for requested persons, Member States should ensure that such persons have access to legal aid until the surrender, or, in cases of non-surrender, until the decision on surrender has become final. The right to legal aid may be subject to an assessment of the means of the requested person, **in Member States in which legal aid is subject to a means test, and/or an assessment of** whether it is in the interests of justice to provide legal aid, **in Member States in which legal aid is subject to a merits test**, according to the applicable eligibility criteria in the executing Member State in question.

Or. fr

Justification

This directive allows for differences in the Member States' criminal justice systems. It must therefore be applied in accordance with the rules on legal aid that are in force in the Member States.

Amendment 66

Birgit Sippel, Sylvia-Yvonne Kaufmann

Proposal for a directive

Recital 14

Text proposed by the Commission

(14) To ensure that requested persons can effectively exercise their right to appoint a lawyer in the issuing Member State to assist the lawyer in the executing Member State, in accordance with Directive 2013/48/EU, the issuing Member State should ensure that requested persons have access to legal aid for the purpose of ***the European arrest warrant proceedings*** in the executing Member State. ***This*** right may be subject to an assessment of the means of the requested person and/or whether it is in the interests of justice to provide legal aid, according to the applicable eligibility criteria in the issuing Member State in question.

Amendment

(14) To ensure that requested persons can effectively exercise their right to appoint a lawyer in the issuing Member State to assist the lawyer in the executing Member State, in accordance with Directive 2013/48/EU, the issuing Member State should ensure that requested persons have access to ***provisional legal aid and to legal aid for the purpose of legal representation in that Member State to assist the lawyer in the executing Member State in the course of European arrest warrant proceedings.*** ***The right to legal aid*** may be subject to an assessment of the means of the requested person and/or whether it is in the interests of justice to provide legal aid, according to the applicable eligibility criteria in the issuing Member State in question.

Or. en

Amendment 67

Timothy Kirkhope, Helga Stevens, Jussi Halla-aho
on behalf of the ECR Group

Proposal for a directive

Recital 14

Text proposed by the Commission

(14) To ensure that requested persons can effectively exercise their right to appoint a lawyer in the issuing Member State to assist the lawyer in the executing Member State, in accordance with Directive 2013/48/EU, the issuing Member State should ensure that requested persons have access to legal aid for the purpose of the European arrest warrant proceedings in the executing Member State. This right may be subject to an assessment of the means of the requested person and/or whether it is in the interests of justice to provide legal aid, according to the applicable eligibility criteria in the issuing Member State in question.

Amendment

(14) In accordance with Directive 2013/48/EU, the issuing Member State should ensure that requested persons have access to legal aid for the purpose of the European arrest warrant proceedings in the executing Member State. This right may be subject to an assessment of the means of the requested person and/or whether it is in the interests of justice to provide legal aid, according to the applicable eligibility criteria in the issuing Member State in question.

Or. en

Amendment 68

Laura Ferrara, Ignazio Corrao

Proposal for a directive Recital 15

Text proposed by the Commission

(15) This Directive provides for the right to provisional legal aid for children deprived of liberty and to legal aid for children that are requested in European arrest warrant proceedings.

Amendment

deleted

Or. it

Amendment 69

Judith Sargentini

Proposal for a directive Recital 15

Text proposed by the Commission

(15) This Directive provides for the right to provisional legal aid for children ***deprived of liberty*** and to legal aid for children that are requested in European arrest warrant proceedings.

Amendment

(15) This Directive provides for the right to provisional ***and ordinary*** legal aid for children and to legal aid for children that are requested in European arrest warrant proceedings. ***Member States should take special measures to ensure the provision of legal aid to children suspected or accused in criminal proceedings.***

Or. en

Amendment 70

Rachida Dati, Pál Csáky

Proposal for a directive

Recital 15

Text proposed by the Commission

(15) This Directive provides for the right to provisional legal aid for children deprived of liberty and to legal aid for children that are requested in European arrest warrant proceedings.

Amendment

(15) This Directive provides for the right to provisional legal aid ***and ordinary legal aid*** for children deprived of liberty and to legal aid for children that are requested in European arrest warrant proceedings. ***Children deprived of liberty are particularly vulnerable so particular attention should be given to them in accordance with the proposal for a directive of the European Parliament and of the Council on procedural safeguards for children suspected or accused in criminal proceedings.***

Or. fr

Justification

This directive guarantees the right of legal aid for children. Particular attention must be paid to this particularly vulnerable category of the population as is affirmed in the directive on procedural safeguards for children suspected or accused in criminal proceedings.

Amendment 71
Louis Michel, Gérard Deprez

Proposal for a directive
Recital 15

Text proposed by the Commission

(15) This Directive provides for the right to provisional legal aid for ***children deprived of liberty and to*** legal aid for ***children*** that are requested in European arrest warrant proceedings.

Amendment

(15) This Directive provides for the right to provisional legal aid ***ipso facto for vulnerable groups, the right*** to legal aid for ***persons*** that are requested in European arrest warrant proceedings ***and the right to ordinary legal aid.***

Or. fr

Amendment 72
Traian Ungureanu

Proposal for a directive
Recital 15 a (new)

Text proposed by the Commission

Amendment

(15 a) The duty of care towards suspected or accused persons who are in a potentially weak position underpins a fair administration of justice. Therefore, Member States should ensure that in the application of this Directive the particular needs of vulnerable suspects and vulnerable accused persons are taken into account.

Or. en

Amendment 73
Birgit Sippel, Sylvia-Yvonne Kaufmann

Proposal for a directive
Recital 16

Text proposed by the Commission

(16) When implementing this Directive, Member States should ensure the respect of the fundamental right of legal aid as provided for in Articles 47(3) of the Charter and Article 6(3)(c) ECHR and ensure that legal aid is available to those who do not have sufficient resources to pay for legal assistance when the interest of justice so requires.

Amendment

(16) When implementing this Directive, Member States should ensure the respect of the fundamental right of legal aid as provided for in Articles 47(3) of the Charter and Article 6(3)(c) ECHR and ensure that legal aid is available to those who do not have sufficient resources to pay for legal assistance ***and/or*** when the interest of justice so requires. ***Where the granting of legal aid is conditional upon a means test, such tests should take into account considerations particular to vulnerable suspects or accused persons.***

Or. en

Amendment 74
Rachida Dati

Proposal for a directive
Recital 16

Text proposed by the Commission

(16) When implementing this Directive, Member States should ensure the respect of the fundamental right of legal aid as provided for in Articles 47(3) of the Charter and Article 6(3)(c) ECHR and ensure that legal aid is available to those who do not have sufficient resources to pay for legal assistance when the interest of justice so requires.

Amendment

(16) When implementing this Directive, Member States should ensure the respect of the fundamental right of legal aid as provided for in Articles 47(3) of the Charter and Article 6(3)(c) ECHR and ensure that legal aid is available to those who do not have sufficient resources to pay for legal assistance when the interest of justice so requires, ***in accordance with the rules in force in the Member States.***

Or. fr

Justification

This directive allows for the differences between Member State criminal justice systems. It must therefore be applied in accordance with the rules on legal aid that are in force in the Member States.

Amendment 75
Birgit Sippel, Sylvia-Yvonne Kaufmann

Proposal for a directive
Recital 16 a (new)

Text proposed by the Commission

Amendment

(16 a) The principle of effectiveness of Union law requires that Member States put in place adequate and effective remedies in the event of a breach of a right conferred upon individuals by Union law. An effective remedy should be available, where the provision of legal aid has been undermined, delayed or denied, where suspects or accused persons have not been adequately informed of their right to legal aid and where provisions about eligibility or cost recovery have been unclear. Therefore, persons applying for legal aid should have the right to appeal a decision refusing legal aid.

Or. en

Amendment 76
Timothy Kirkhope, Helga Stevens, Jussi Halla-aho
on behalf of the ECR Group

Proposal for a directive
Recital 17

Text proposed by the Commission

Amendment

(17) The Member States should collect data showing how the right to legal aid for suspects or accused persons and requested persons have been accessed. Member States should also collect data on the number of cases where provisional legal aid was provided for suspects or accused persons deprived of liberty, as well as for requested persons, and the

deleted

number of cases where this right was not exercised. Such data should include the number of requests for legal aid in European arrest warrant proceedings when the Member State acts as issuing and executing State, as well as the number of cases where these requests were granted. Data on the costs for providing provisional legal aid for persons deprived of liberty and for requested persons should also be collected.

Or. en

Amendment 77
Birgit Sippel, Sylvia-Yvonne Kaufmann

Proposal for a directive
Recital 17

Text proposed by the Commission

(17) The Member States should collect data showing how the right to legal aid for suspects or accused persons and requested persons have been accessed. Member States should also collect data on the number of cases where *provisional* legal aid was provided for suspects or accused persons *deprived of liberty*, as well as for requested persons, and the number of cases where this right was not exercised. Such data should include the number of requests for legal aid in European arrest warrant proceedings when the Member State acts as issuing and executing State, as well as the number of cases where these requests were granted. Data on the costs for providing *provisional* legal aid for *persons deprived of liberty* and for requested persons should also be collected.

Amendment

(17) The Member States should collect data showing how the right to legal aid for suspects or accused persons and requested persons have been accessed. Member States should also collect data on the number of cases where legal aid was provided for suspects or accused persons, as well as for requested persons, and the number of cases where this right was not exercised. Such data should include the number of requests for legal aid in European arrest warrant proceedings when the Member State acts as issuing and executing State, as well as the number of cases where these requests were granted. Data on the costs for providing legal aid for *suspects or accused persons* and for requested persons should also be collected.

Or. en

Amendment 78
Axel Voss

Proposal for a directive
Recital 17

Text proposed by the Commission

(17) The Member States should collect data showing how the right to legal aid for suspects or accused persons and requested persons have been accessed. Member States should also collect data on the number of cases where provisional legal aid was provided for suspects or accused persons deprived of liberty, as well as for requested persons, and the number of cases where this right was not exercised. Such data should include the number of requests for legal aid in European arrest warrant proceedings when the Member State acts as issuing and executing State, as well as the number of cases where these requests were granted. Data on the costs for providing provisional legal aid for persons deprived of liberty and for requested persons should also be collected.

Amendment

(17) The Member States should collect **available** data showing how the right to legal aid for suspects or accused persons and requested persons have been accessed. Member States should also collect data on the number of cases where provisional legal aid was provided for suspects or accused persons deprived of liberty, as well as for requested persons, and the number of cases where this right was not exercised. Such data should include the number of requests for legal aid in European arrest warrant proceedings when the Member State acts as issuing and executing State, as well as the number of cases where these requests were granted. Data on the costs for providing provisional legal aid for persons deprived of liberty and for requested persons should also be collected.

Or. de

Justification

For the sake of consistency with Article 6(1).

Amendment 79
Rachida Dati, Pál Csáky

Proposal for a directive
Recital 17

Text proposed by the Commission

(17) The Member States should collect data showing how the right to legal aid for suspects or accused persons and requested

Amendment

(17) The Member States should collect **relevant** data showing how the right to legal aid for suspects or accused persons

persons have been accessed. Member States should also collect data on the number of cases where provisional legal aid was provided for suspects or accused persons deprived of liberty, as well as for requested persons, and the number of cases where this right was not exercised. Such data should include the number of requests for legal aid in European arrest warrant proceedings when the Member State acts as issuing and executing State, as well as the number of cases where these requests were granted. Data on the costs for providing provisional legal aid for persons deprived of liberty and for requested persons should also be collected.

and requested persons have been accessed. Member States should also collect data on the number of cases where provisional legal aid was provided for suspects or accused persons deprived of liberty, as well as for requested persons, and the number of cases where this right was not exercised. Such data should include the number of requests for legal aid in European arrest warrant proceedings when the Member State acts as issuing and executing State, as well as the number of cases where these requests were granted. Data on the costs for providing provisional legal aid for persons deprived of liberty and for requested persons should also be collected. ***Those data should be used as the basis for an assessment of the effectiveness of Europe's legal systems.***

Or. fr

Justification

Relevant data on the arrangements for accessing legal aid is essential in order to be able to gauge the effectiveness of the systems in place.

Amendment 80 Judith Sargentini

Proposal for a directive Recital 18

Text proposed by the Commission

(18) This Directive should apply to suspects or accused persons regardless of their legal status, citizenship or nationality. This Directive upholds the fundamental rights and principles recognised by the Charter of Fundamental Rights of the European Union and the European Convention on Human Rights, including the prohibition of torture and inhuman and degrading treatment, the right to liberty and

Amendment

(18) This Directive should apply to suspects or accused persons regardless of their legal status, citizenship or nationality, ***sex, race, colour, ethnic or social origin, genetic features, language, religion or belief, political or any other opinion, membership of a national minority, property, birth, disability, residence status, age or sexual orientation or any other status.*** This Directive upholds the

security, respect for private and family life, the right to the integrity of the person, the rights of the child, integration of persons with disabilities, the right to an effective remedy and the right to a fair trial, the presumption of innocence and the rights of the defence. This Directive should be implemented in accordance with those rights and principles.

fundamental rights and principles recognised by the Charter of Fundamental Rights of the European Union and the European Convention on Human Rights, including the prohibition of torture and inhuman and degrading treatment, the right to liberty and security, respect for private and family life, the right to the integrity of the person, the rights of the child, integration of persons with disabilities, the right to an effective remedy and the right to a fair trial, the presumption of innocence and the rights of the defence. This Directive should be implemented in accordance with those rights and principles.

Or. en

Amendment 81
Rachida Dati, Pál Csáky

Proposal for a directive
Recital 19

Text proposed by the Commission

(19) This Directive sets minimum rules. Member States may extend the rights set out in this Directive in order to provide a higher level of protection. Such higher level of protection should not constitute an obstacle to the mutual recognition of judicial decisions that those minimum rules are designed to facilitate. The level of protection should never fall below the standards provided by the Charter or the ECHR, as interpreted in the case-law of the Court of Justice and of the ECtHR.

Amendment

(19) This Directive sets minimum rules. Member States may extend the rights set out in this Directive in order to provide a higher level of protection. Such higher level of protection should not constitute an obstacle to the mutual recognition of judicial decisions that those minimum rules are designed to facilitate. The level of protection should never fall below the standards provided by the Charter or the ECHR, as interpreted in the case-law of the Court of Justice and of the ECtHR. ***Under no circumstances may this Directive be interpreted as restricting the rights and guarantees afforded by national legal systems which offer a higher level of protection.***

Or. fr

Justification

The directive must not result in a lowering of the levels of protection afforded by the laws of the Member States.

Amendment 82

Timothy Kirkhope, Helga Stevens, Jussi Halla-aho

on behalf of the ECR Group

Kazimierz Michał Ujazdowski

Proposal for a directive

Recital 19

Text proposed by the Commission

(19) This Directive sets minimum rules. Member States may extend the rights set out in this Directive in order to provide a higher level of protection. Such higher level of protection should not constitute an obstacle to the mutual recognition of judicial decisions that those minimum rules are designed to facilitate. The level of protection should never fall below the standards provided by the Charter or the ECHR, *as interpreted in the case-law of the Court of Justice and of the ECtHR.*

Amendment

(19) This Directive sets minimum rules. Member States may extend the rights set out in this Directive in order to provide a higher level of protection. Such higher level of protection should not constitute an obstacle to the mutual recognition of judicial decisions that those minimum rules are designed to facilitate. The level of protection should never fall below the standards provided by the Charter or the ECHR;

Or. en

Amendment 83

Birgit Sippel, Sylvia-Yvonne Kaufmann

Proposal for a directive

Article 1 – paragraph 1 – point a

Text proposed by the Commission

(a) the right to provisional legal aid for suspects or accused persons in criminal proceedings *who are deprived of liberty*, and

Amendment

(a) the right to provisional legal aid *and to legal aid* for suspects or accused persons in criminal proceedings, and

Or. en

Amendment 84
Rachida Dati

Proposal for a directive
Article 1 – paragraph 1 – point a

Text proposed by the Commission

(a) the right to provisional legal aid for suspects or accused persons in criminal proceedings who are deprived of liberty, and

Amendment

(a) the right to provisional legal aid **and to ordinary legal aid** for suspects or accused persons in criminal proceedings who are deprived of liberty, and

Or. fr

Justification

In order to guarantee the right to due process throughout criminal proceedings and to enhance mutual trust between Member States in each other's criminal justice systems, the scope of this directive should be extended to include ordinary legal aid for suspects and accused persons who are deprived of liberty.

Amendment 85
Laura Ferrara, Ignazio Corrao

Proposal for a directive
Article 1 – paragraph 1 – point a

Text proposed by the Commission

(a) the right to provisional legal aid for suspects or accused persons in criminal proceedings **who are deprived of liberty**, and

Amendment

(a) the right to provisional legal aid for suspects or accused persons in criminal proceedings, and

Or. it

Amendment 86
Rachida Dati

Proposal for a directive
Article 1 – paragraph 1 – point b

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Text proposed by the Commission

Amendment

(b) the right to provisional legal aid and to legal aid for requested persons who are subject to European arrest warrant proceedings.

(b) the right to provisional legal aid and to **ordinary** legal aid for requested persons who are subject to European arrest warrant proceedings.

Or. fr

Justification

In order to guarantee the right to due process throughout criminal proceedings and to enhance mutual trust between Member States in each other's criminal justice systems, the scope of this directive should be extended to include ordinary legal aid for suspects and accused persons who are deprived of liberty.

Amendment 87

Rachida Dati, Pál Csáky

Proposal for a directive

Article 1 – paragraph 2

Text proposed by the Commission

Amendment

2. This Directive complements Directive 2013/48/EU. Nothing in this Directive shall be interpreted as limiting the rights provided for in that Directive.

2. This Directive complements Directive 2013/48/EU **on the right of access to a lawyer**. Nothing in this Directive shall be interpreted as limiting the rights provided for in that Directive.

Or. fr

Amendment 88

Birgit Sippel, Sylvia-Yvonne Kaufmann

Proposal for a directive

Article 2 – paragraph 1 – point a

Text proposed by the Commission

Amendment

a) suspects or accused persons in criminal proceedings, who **are deprived of liberty and who** have a right of access to a lawyer

a) suspects or accused persons in criminal proceedings, who have a right of access to a lawyer pursuant to Directive

pursuant to Directive 2013/48/EU;

2013/48/EU;

Or. en

Amendment 89
Caterina Chinnici

Proposal for a directive
Article 2 – paragraph 1 – point a

Text proposed by the Commission

Amendment

a) suspects or accused persons in criminal proceedings, ***who are deprived of liberty and*** who have a right of access to a lawyer pursuant to Directive 2013/48/EU;

a) suspects or accused persons in criminal proceedings who have a right of access to a lawyer pursuant to Directive 2013/48/EU ***or other legally binding Union acts;***

Or. en

Justification

The addition intends to clarify that the guarantees provided in this Directive shall apply also when the right to legal aid comes from other legislation: in particular (though not necessarily only) by the Directive on procedural safeguards for children suspected or accused in criminal proceedings.

Amendment 90
Laura Ferrara, Ignazio Corrao

Proposal for a directive
Article 2 – paragraph 1 – point a

Text proposed by the Commission

Amendment

a) suspects or accused persons in criminal proceedings, ***who are deprived of liberty and*** who have a right of access to a lawyer pursuant to Directive 2013/48/EU;

a) suspects or accused persons in criminal proceedings who have a right of access to a lawyer pursuant to Directive 2013/48/EU;

Or. it

Amendment 91

Axel Voss

Proposal for a directive

Article 2 – paragraph 1 – point b a (new)

Text proposed by the Commission

Amendment

ba) This Directive shall not apply to situations in which a person's liberty is briefly curtailed for one of the following reasons:

a) in order to identify the person concerned or to determine whether an investigation should be opened;

b) in order to check whether the person concerned is in possession of weapons;

c) in order to take a blood or DNA sample, to conduct an alcohol test or carry out any other investigative measure, with the exception of those specifically listed in Article 3(3)(c) of Directive 2013/48/EU;

d) in order to guarantee, for the purposes of questioning by a law-enforcement authority or by a court, the presence of a suspect or an accused person who has disregarded the statutory requirement to appear;

e) in order to bring the suspect or the accused person in a criminal case before the competent court, in accordance with the relevant provisions of national law.

Or. de

Justification

If a person's liberty is curtailed briefly, for example to enable him or her to meet an obligation under the law, the granting of the right to legal aid may not be appropriate in all cases. An exhaustive list of the cases in question should therefore be drawn up, and these should be excluded from the scope of the directive.

Amendment 92
Heinz K. Becker

Proposal for a directive
Article 2 – paragraph 1 a (new)

Text proposed by the Commission

Amendment

This Directive shall not apply in connection with minor offences if, under national law, an administrative penalty may be imposed by an authority other than a public court and an appeal against the imposition of that penalty may be lodged with a court.

Or. de

Justification

In some Member States minor offences, such as traffic offences, are not dealt with by the ordinary courts. It would be disproportionate to lay down a right to legal aid in such cases, which should therefore be excluded from the scope of the directive.

Amendment 93
Pál Csáky, Michał Boni, Kinga Gál, Csaba Sógor, Tomáš Zdechovský, Elissavet Vozemberg

Proposal for a directive
Article 2 – paragraph 1 a (new)

Text proposed by the Commission

Amendment

Without prejudice to the right to a fair trial, in respect of minor offences:

(a) where the law of a Member State provides for the imposition of a sanction by an authority other than a court having jurisdiction in criminal matters, and the imposition of such a sanction may be appealed or referred to such a court; or

(b) where deprivation of liberty cannot be imposed as a sanction;

this Directive shall only apply to the

proceedings before a court having jurisdiction in criminal matters.

In any event, this Directive shall fully apply where the suspect or accused person is deprived of liberty, irrespective of the stage of the criminal proceedings.

Or. en

Amendment 94
Elissavet Vozemberg

Proposal for a directive
Article 2 – paragraph 1 a (new)

Text proposed by the Commission

Amendment

Without prejudice to the right to a fair trial, this Directive shall not apply in situations where the liberty of the person concerned has been restricted in order to carry out any investigative or evidence-gathering act, other than those specifically referred to in Article 3(3)(c) of Directive 2013/48/EU.

Or. en

Amendment 95
Heinz K. Becker

Proposal for a directive
Article 2 a (new)

Text proposed by the Commission

Amendment

Article 2a

In keeping with the fundamental right to a fair trial, this Directive shall not apply in cases involving brief curtailment of a person's liberty, in particular in connection with identity checks, checks to determine whether an investigation

should be opened, the taking of DNA samples, the performance of an alcohol test or other actions to secure evidence, checks to determine whether the person is in possession of illegal items or items which are not allowed in public places, such as drugs or weapons, or to guarantee the presence of a suspect or an accused person before a judicial authority or a court, for the purposes of questioning or the securing of evidence.

Or. de

Justification

Situations in which a person's absolute liberty is briefly curtailed, for example if they are summonsed to appear in court as a witness or are spontaneously stopped by the police for the purposes of an identity check or a search for illegal drugs or weapons, should be excluded from the scope of the directive.

Amendment 96

Jussi Halla-aho, Merja Kyllönen, Kazimierz Michał Ujazdowski

Proposal for a directive

Article 2 a (new)

Text proposed by the Commission

Amendment

Article 2 a

In respect of minor offences, and provided this is in conformity with the right to a fair trial, this Directive shall not apply:

a. where the law of a Member State provides for the imposition of a sanction by an authority other than a court having jurisdiction in criminal matters, and the imposition of such a sanction may be appealed or referred to such a court; or

b. where deprivation of liberty cannot be imposed as a sanction.

Or. en

Justification

The scope of the Directive should include an exception for minor offences that are dealt with in out-of-court proceedings. Minor offences, such as minor traffic offences, are in many Member States considered to be administrative offences and are therefore out of the scope of the Directive. In some member states, however, even minor traffic offences are considered to be criminal offences. The exception proposed here would therefore only bring on the same line different systems of member states and would therefore further harmonise the scope of the Directive. Without the above mentioned exception, on the other hand, the Directive could in some member states cover summary proceedings where a police officer issues a fine and the prosecutor only confirms the fine afterwards. In such situations, it would be practically impossible to ensure all the rights under the Directive. Also in these situations the person can always, if he or she so wants, disagree with the decision which is then taken to the actual court proceedings. There is also a similar exception for minor offences in all previous measures of the Roadmap (directives on interpretation and translation, on the right to information and on the right of access to a lawyer).

Amendment 97 **Eleftherios Synadinos**

Proposal for a directive **Article 3 – paragraph 1 – point a**

Text proposed by the Commission

a) legal aid means funding and assistance from the Member State ensuring the exercise of the right of access to a lawyer,

Amendment

a) legal aid means funding and assistance from the Member State ensuring the exercise of the right of ***suspects or accused persons*** access to a lawyer ***meeting the requisite criteria regarding the level and quality of legal aid provided,***

Or. el

Amendment 98 **Birgit Sippel, Sylvia-Yvonne Kaufmann**

Proposal for a directive **Article 3 – paragraph 1 – point b**

Text proposed by the Commission

b) provisional legal aid means legal aid ***to***

Amendment

b) provisional legal aid means legal aid

a person deprived of liberty until the decision on legal aid has been taken,

provided until the decision on legal aid has been taken *and come into effect*,

Or. en

Amendment 99

Axel Voss

Proposal for a directive

Article 3 – paragraph 1 – point b

Text proposed by the Commission

Amendment

b) provisional legal aid means legal aid to a person deprived of liberty until *the* decision on legal aid has been taken,

b) provisional legal aid means *temporary* legal aid to a person deprived of liberty until *he or she is released or until a final* decision on legal aid has been taken *under national law*,

Or. de

Justification

The definition of provisional legal aid should make it clear that it is an emergency arrangement which applies only in the event of deprivation of liberty and that as soon the person concerned is released the right to provisional legal aid lapses.

Amendment 100

Rachida Dati

Proposal for a directive

Article 3 – paragraph 1 – point b

Text proposed by the Commission

Amendment

(b) provisional legal aid means legal aid to a person deprived of liberty until the decision on legal aid has been taken,

(b) provisional legal aid means legal aid to a person deprived of liberty *from the initial stages in proceedings* until the decision on legal aid has been taken,

Or. fr

Justification

The arrangements for provisional legal aid must provide a guarantee of access to legal aid without delay following the initial deprivation of liberty, from the initial stages in the proceedings until such time as the decision on granting legal aid is taken.

Amendment 101

Laura Ferrara, Ignazio Corrao

Proposal for a directive

Article 3 – paragraph 1 – point b

Text proposed by the Commission

b) provisional legal aid means legal aid to a person ***deprived of liberty*** until the decision on legal aid has been taken,

Amendment

b) provisional legal aid means legal aid to a ***suspect, an accused person, or a requested person*** until the decision on legal aid has been taken,

Or. it

Amendment 102

Filiz Hyusmenova

Proposal for a directive

Article 3 – paragraph 1 – point d

Text proposed by the Commission

d) ‘lawyer’ means any person, who, in accordance with national law, is qualified and entitled, including by means of accreditation by an authorised body, to provide legal advice ***and assistance*** to suspects or accused persons.

Amendment

d) ‘lawyer’ means any person, who, in accordance with national law, is qualified and entitled, including by means of accreditation by an authorised body, to provide legal advice, ***assistance and representation*** to suspects or accused persons.

Or. en

Amendment 103

Birgit Sippel, Sylvia-Yvonne Kaufmann

Proposal for a directive
Article 4 – title

Text proposed by the Commission

Access to provisional legal aid

Amendment

Access to provisional legal aid ***and to legal aid***

Or. en

Amendment 104
Axel Voss

Proposal for a directive
Article 4 – title

Text proposed by the Commission

Access to provisional legal aid

Amendment

Provisional legal aid in the context of criminal prosecution

Or. de

Justification

For the sake of clarity, Article 4 should deal only with the rights applicable in the context of criminal prosecution and Article 5 with those applicable in the context of the European arrest warrant procedure.

Amendment 105
Axel Voss

Proposal for a directive
Article 4 – paragraph 1 – introductory part

Text proposed by the Commission

1. Member States shall ensure that ***the following*** persons, ***if they so wish***, have the right to provisional legal aid:

Amendment

1. Member States shall ensure that persons ***suspected or accused of criminal offences who have been deprived of their liberty and have the right of access to a lawyer under Directive 2013/48/EU*** have the right to provisional legal aid:

Justification

In the interests of clarity, Article 4 should contain only the rights applicable in the prosecution procedure, whilst Article 5 should contain the rights applicable in the European Arrest Warrant procedure.

Amendment 106

Axel Voss

Proposal for a directive

Article 4 – paragraph 1 – point a

Text proposed by the Commission

Amendment

a) suspects or accused persons in criminal proceedings, who are deprived of liberty; *deleted*

Justification

In the interests of clarity, Article 4 should contain only the rights applicable in the prosecution procedure, whilst Article 5 should contain the rights applicable in the European Arrest Warrant procedure.

Amendment 107

Birgit Sippel, Sylvia-Yvonne Kaufmann

Proposal for a directive

Article 4 – paragraph 1 – point a

Text proposed by the Commission

Amendment

(a) suspects or accused persons in criminal proceedings, who *are deprived of liberty*;

(a) suspects or accused persons in criminal proceedings, who *have the right of access to a lawyer pursuant to Directive 2013/48/EU*;

Amendment 108
Caterina Chinnici

Proposal for a directive
Article 4 – paragraph 1 – point a

Text proposed by the Commission

(a) suspects or accused persons in criminal proceedings, who ***are deprived of liberty***;

Amendment

(a) suspects or accused persons in criminal proceedings, who ***have the right of access to a lawyer pursuant to Directive 2013/48/EU or other legally binding Union acts***;

Or. en

Justification

The addition intends to clarify that the guarantees provided in this Directive shall apply not only when the right to legal aid comes from Directive 2013/48/EU, but also when it comes from other legislation: in particular (though not necessarily only) by the Directive on procedural safeguards for children suspected or accused in criminal proceedings.

Amendment 109
Laura Ferrara, Ignazio Corrao

Proposal for a directive
Article 4 – paragraph 1 – point a

Text proposed by the Commission

(a) suspects or accused persons in criminal proceedings, ***who are deprived of liberty***;

Amendment

(a) suspected or accused persons in criminal proceedings;

Or. it

Amendment 110
Axel Voss

Proposal for a directive
Article 4 – paragraph 1 – point b

Text proposed by the Commission

Amendment

b) requested persons deprived of liberty in the executing Member State.

deleted

Or. de

Amendment 111

Birgit Sippel, Sylvia-Yvonne Kaufmann

Proposal for a directive

Article 4 – paragraph 1 – point b

Text proposed by the Commission

Amendment

(b) requested persons **deprived of liberty** in the executing Member State.

(b) requested persons, **who have the right of access to a lawyer pursuant to Directive 2013/48/EU, including legal assistance both in the executing as well as in the issuing Member State, in line with Article 10 of that Directive.**

Or. en

Amendment 112

Caterina Chinnici

Proposal for a directive

Article 4 – paragraph 1 – point b

Text proposed by the Commission

Amendment

(b) requested persons **deprived of liberty** in the executing Member State.

(b) requested persons in the executing Member State, **who have the right of access to a lawyer pursuant to Directive 2013/48/EU or other legally binding Union acts.**

Or. en

Justification

The addition intends to clarify that the guarantees provided in this Directive shall apply not only when the right to legal aid comes from Directive 2013/48/EU, but also when it comes from other legislation: in particular (though not necessarily only) by the Directive on procedural safeguards for children suspected or accused in criminal proceedings.

Amendment 113

Laura Ferrara, Ignazio Corrao

Proposal for a directive

Article 4 – paragraph 1 – point b

Text proposed by the Commission

(b) requested persons ***deprived of liberty*** in the executing Member State.

Amendment

(b) requested persons in the executing Member State.

Or. it

Amendment 114

Birgit Sippel, Sylvia-Yvonne Kaufmann

Proposal for a directive

Article 4 – paragraph 2

Text proposed by the Commission

2. Provisional legal aid shall be granted without undue delay ***after deprivation of liberty*** and in any event before questioning.

Amendment

2. Provisional legal aid shall be granted without undue delay ***from the time that they are made aware by the competent authorities of a Member State, by official notification or otherwise, that they are suspected or accused of having committed a criminal offence*** and in any event before questioning.

Or. en

Amendment 115

Axel Voss

Proposal for a directive
Article 4 – paragraph 2

Text proposed by the Commission

2. Provisional legal aid shall be granted without undue delay after deprivation of liberty and ***in any event*** before questioning.

Amendment

2. ***At the request of an accused person or a suspect***, provisional legal aid shall be granted without undue delay after deprivation of liberty and ***at the latest*** before questioning ***by the police or other prosecuting or judicial authorities***. ***Provisional legal aid shall be granted in the event of prosecution where the person concerned is accused or suspected of committing a crime.***

Or. de

Justification

The aim of this amendment is to make it clear that short-term provisional legal aid must be provided if it is requested by the person concerned. Its scope should be restricted to proceedings in which the person concerned is accused or suspected of having committed a crime. Situations in which the person concerned is summoned as a witness in other proceedings shall be excluded.

Amendment 116
Laura Ferrara, Ignazio Corrao

Proposal for a directive
Article 4 – paragraph 2

Text proposed by the Commission

2. Provisional legal aid shall be granted without undue delay ***after deprivation of liberty*** and in any event before ***questioning***.

Amendment

2. Provisional legal aid shall be granted without undue delay and in any event before ***the performance of any procedural step which, under national or European law, has to be carried out in the presence of a lawyer.***

Or. it

Amendment 117

Axel Voss

Proposal for a directive

Article 4 – paragraph 2 a (new)

Text proposed by the Commission

Amendment

2 a. If the deprivation of liberty is for a short period, Member States may, in their legislation, restrict the possibility of providing provisional legal aid to cases deemed appropriate in the interests of justice. The appropriateness shall be verified by the responsible authorities with no delay to the deprivation of liberty and at the latest before questioning. Provisional legal aid shall be provided whenever this is necessitated by the seriousness of the accusation, the complexity of the case, the maximum penalty anticipated or the inability of the person concerned to defend him- or herself.

Or. de

Justification

This amendment aims to introduce the criterion of the interests of justice into the Directive. Article 6(3)(c) of the European Convention on Human Rights guarantees the right to free legal assistance if the person concerned does not have sufficient means to pay for such, if this is in the interests of justice.

Amendment 118

Jussi Halla-aho, Merja Kyllönen

Proposal for a directive

Article 4 – paragraph 2 a (new)

Text proposed by the Commission

Amendment

2 a. Article 4 – paragraph 2a (new)

Without prejudice to the right to a fair trial, in case of short term deprivation of

liberty and when this is not proportionate taking account the interests of justice, paragraphs 1 and 2 shall not apply.

Or. en

Justification

The provision entailing right to provisional legal aid each time there is even a very short term deprivation of liberty in relation to a minor case that turns out to be also non-complex would be disproportionate and difficult to carry out in practice. There is, however, no common European understanding on what is a short term deprivation of liberty. The elements that should therefore be used to narrow the exception should be based on the criteria of interest of justice, which criteria has already been used by the ECHR in its case law in relation to subject matter and which for that reason would set truly European standards for the right to provisional legal aid. It could be further explained in the Article or in the Recitals that elements that should be taken into account when assessing whether this is in the interest of justice are the complexity of the case, the seriousness of the alleged offence and the maximum penalty that can reasonably be expected to be imposed.

Amendment 119

Pál Csáky, Kinga Gál, Csaba Sógor, Tomáš Zdechovský, Elissavet Vozemberg

Proposal for a directive

Article 4 – paragraph 2 a (new)

Text proposed by the Commission

Amendment

2 a. Without prejudice to the right to a fair trial, in case of short term deprivation of liberty for less serious offences, and when this is not proportionate taking into account the interests of justice, paragraphs 1 and 2 shall not apply.

Or. en

Amendment 120

Birgit Sippel, Sylvia-Yvonne Kaufmann

Proposal for a directive

Article 4 – paragraph 3

Text proposed by the Commission

3. Provisional legal aid shall be ensured until the final decision on legal aid has been taken and comes into effect, **or**, where the suspects or accused persons are granted legal aid, the appointment of the lawyer has taken effect.

Amendment

3. Provisional legal aid shall be ensured until the final decision on legal aid has been taken and comes into effect, **and**

(a) where the suspects or accused persons are granted legal aid, the appointment of the lawyer has taken effect, **or**

(b) where legal aid has been denied, the person has had sufficient time to find and engage a lawyer.

Or. en

Amendment 121

Axel Voss

Proposal for a directive

Article 4 – paragraph 3

Text proposed by the Commission

3. Provisional legal aid shall be ensured until the **final decision on legal aid has been taken and comes into effect**, or, **where the suspects or accused persons are granted legal aid, the appointment of the lawyer has taken effect.**

Amendment

3. Provisional legal aid shall be ensured until the **person concerned is set free or a final decision on ordinary legal aid is made by the responsible authorities:**

Or. de

Justification

This amendment aims to bring the implementing regulation into line with the definition set out in Article 3(b) of the Directive and explain the provisional scope of the right to provisional legal aid. Recitals 9 and 11 must be brought into line accordingly.

Amendment 122

Rachida Dati, Pál Csáky

Proposal for a directive
Article 4 – paragraph 3

Text proposed by the Commission

3. Provisional legal aid shall be ensured until the final decision on legal aid has been taken and comes into effect, or, where the suspects or accused persons are granted legal aid, the appointment of the lawyer has taken effect.

Amendment

3. Provisional legal aid shall be ensured until the final decision on **ordinary** legal aid has been taken and comes into effect, or, where the suspects or accused persons are granted legal aid, the appointment of the lawyer has taken effect.

Or. fr

Justification

In order to guarantee the right to due process throughout criminal proceedings and to enhance mutual trust between Member States in each other's criminal justice systems, the scope of this directive should be extended to include ordinary legal aid for suspects and accused persons who are deprived of liberty.

Amendment 123
Axel Voss

Proposal for a directive
Article 4 – paragraph 3 a (new)

Text proposed by the Commission

Amendment

3 a. This decision shall be final if the person or suspect is granted ordinary legal aid, a lawyer has been appointed or such an appointment has been refused.

Or. de

Justification

This amendment aims to bring the implementing regulation into line with the definition set out in Article 3(b) of the Directive and to explain the provisional scope of the right to provisional legal aid.

Amendment 124
Filiz Hyusmenova

Proposal for a directive
Article 4 – paragraph 4 a (new)

Text proposed by the Commission

Amendment

4 a. Member states shall ensure that provisional legal aid also includes, where necessary, interpretation for communication between the person deprived of liberty and the lawyer in accordance with Directive 2010/64/EU on the right to interpretation and translation in criminal proceedings, in particular having regard to Article 2(2) thereof.

Or. en

Amendment 125
Judith Sargentini

Proposal for a directive
Article 4 – paragraph 5

Text proposed by the Commission

Amendment

5. Member States shall be able to provide that the costs relating to provisional legal aid can be recovered from suspects or accused persons and requested persons who do not meet the eligibility criteria for legal aid as applicable under national law.

deleted

Or. en

Justification

This paragraph should be deleted, as it would seriously inhibit effective access to legal assistance

Amendment 126
Birgit Sippel, Sylvia-Yvonne Kaufmann

Proposal for a directive
Article 4 – paragraph 5

Text proposed by the Commission

5. Member States **shall be able to** provide that the costs relating to provisional legal aid can be recovered from suspects or accused persons and requested persons who do not meet the eligibility criteria for legal aid as applicable under national law.

Amendment

5. Member States **may** provide that the costs relating to provisional legal aid can be recovered from suspects or accused persons and requested persons who do not meet the eligibility criteria for legal aid as applicable under national law, **and who knowingly provided the competent authorities with false information on their personal financial situation. In order to ensure that any recovery of costs relating to provisional legal aid does not prejudice the suspect or accused person in such a way as to undermine the overall fairness of the proceedings, Member States shall ensure that the conditions attached to recovery of costs are clear and reasonable and take account of the specific financial situation of the suspect or accused person.**

Or. en

Amendment 127
Laura Ferrara, Ignazio Corrao

Proposal for a directive
Article 4 – paragraph 5

Text proposed by the Commission

5. Member States shall be able to provide that the costs relating to provisional legal aid can be recovered from suspects or accused persons and requested persons who do not meet the eligibility criteria for legal aid as applicable under national law.

Amendment

5. Member States shall be able to provide that the costs relating to provisional legal aid can be recovered from suspects or accused persons and requested persons who do not meet the eligibility criteria for legal aid as applicable under national law **at the end of specific judicial proceedings in which the judgment has the force of judicata.**

Amendment 128
Birgit Sippel, Sylvia-Yvonne Kaufmann

Proposal for a directive
Article 4 – paragraph 5 a (new)

Text proposed by the Commission

Amendment

5 a. Member States shall take appropriate measures to ensure that the persons referred to in Article 4(1), if they so wish, have access to legal aid:

(a) if they lack sufficient financial resources to meet parts or all of the costs of their defence and the proceedings ('means'), based on an assessment including all relevant and objective factors, among them income, capital, family situation, standard of living, costs of legal representation; and/or

(b) if the interests of justice so require ('merits'), based on an assessment of the urgency and complexity of the case, the seriousness of the offence, the social and personal situation of the person concerned as well as the severity of the potential penalty.

Or. en

Amendment 129
Laura Ferrara, Ignazio Corrao

Proposal for a directive
Article 4 – paragraph 5 a (new)

Text proposed by the Commission

Amendment

5a. Decisions on legal aid shall be based on objective criteria such as assessment of the financial, social, and personal

circumstances of the suspect, accused person, or requested person concerned.

Or. it

Amendment 130
Louis Michel, Gérard Deprez

Proposal for a directive
Article 4 – paragraph 5 a (new)

Text proposed by the Commission

Amendment

5a. Member States shall ensure that applications for provisional legal aid, ordinary legal aid and legal aid in European arrest warrant proceedings are assessed in the light of the applicant's financial situation.

Or. fr

Amendment 131
Birgit Sippel, Sylvia-Yvonne Kaufmann

Proposal for a directive
Article 4 – paragraph 5 b (new)

Text proposed by the Commission

Amendment

5 b. In order to ensure the effectiveness and quality of legal aid with a view to safeguarding the right to a fair trial, Member States shall, at least, ensure that:

(a) legal aid is provided at all stages of the criminal justice proceeding;

(b) an accessible, comprehensive and independent system is put in place to meet the obligations laid out in this Directive. This system shall dispose of sufficient human and financial resources and shall, in particular, be responsible for:

(i) decisions on whether or not to grant legal aid,

(ii) the accreditation and appointment of legal aid lawyers to ensure that the lawyers possess sufficient education, training, skills and experience to fulfil their obligations and that the appointment is based on the principles of independence and non-interference and is free from arbitrariness, and

(iii) providing appropriate training to all staff involved in the decision-making on legal aid in criminal proceedings as well as to legal aid lawyers;

(c) the preferences and wishes of the persons referred to in 4(1) concerning the choice of the legal aid lawyer are sufficiently taken into account by the system, including potential wishes for continuity in legal representation as well as wishes for a replacement of the assigned legal aid lawyer if the lawyer manifestly failed to ensure effective legal assistance;

(d) any decision rejecting in part or in full an application for legal aid is given to the suspect or accused person or the requested person in writing.

Or. en

Amendment 132
Laura Ferrara

Proposal for a directive
Article 4 – paragraph 5 b (new)

Text proposed by the Commission

Amendment

5. To guarantee the right to a fair trial, Member States shall provide for independent legal aid of high quality at every stage of the proceedings. In particular, they shall ensure that criteria

are laid down for the accreditation of officially appointed lawyers and that continuity of representation is guaranteed at every stage of the proceedings.

Or. it

Amendment 133
Louis Michel, Gérard Deprez

Proposal for a directive
Article 4 – paragraph 5 b (new)

Text proposed by the Commission

Amendment

5b. Each Member State shall ensure that the lawyers assigned pursuant to this Directive practise criminal law on its territory.

Or. fr

Amendment 134
Birgit Sippel, Sylvia-Yvonne Kaufmann

Proposal for a directive
Article 4 – paragraph 5 c (new)

Text proposed by the Commission

Amendment

5 c. Member States shall provide to the persons referred to in 4(1) all relevant information on provisional legal aid and on legal aid in criminal proceedings. Such information shall be provided in an easily accessible and understandable way and include the criteria on eligibility for legal aid, information on how, when and where to apply, as well as information on possible ways to appeal a decision resulting in a refusal of legal aid or in insufficient legal assistance.

Or. en

Amendment 135
Louis Michel, Gérard Deprez

Proposal for a directive
Article 4 – paragraph 5 c (new)

Text proposed by the Commission

Amendment

5c. Member States shall appoint an independent authority with responsibility for deciding whether or not to grant legal aid and for assigning legal aid lawyers.

Or. fr

Amendment 136
Caterina Chinnici

Proposal for a directive
Article 4 a (new)

Text proposed by the Commission

Amendment

Article 4 a

Access to ordinary legal aid

1. Member States shall ensure that the persons referred to in Article 4(1) have access to legal aid if they lack sufficient financial resources to meet some or all of the costs of the defence and the proceedings as a result of their economic situation ('means test') and/or when such aid is required in the interests of justice ('merits test').

2. The assessment of the person's economic situation shall be made on the basis of objective factors, such as income, capital, family situation, standard of living on the one hand and the cost of a defence lawyer on the other hand.

3. The assessment of legal aid being required in the interests of justice shall

include an assessment of the complexity of the case, the social and personal situation of the person concerned, the seriousness of the offence and the severity of the potential penalty that may be imposed.

4. Member States shall make all relevant information on legal aid in criminal proceedings easily accessible and understandable for suspects or accused persons and requested persons, including information on how and where to apply for such aid, transparent criteria on eligibility for legal aid, as well as information on the possibilities available, including complaints, in circumstances where access to legal aid is denied or a legal aid lawyer provides insufficient legal assistance.

Or. en

Justification

The explicit reference to the possibility of complaints is provided in the "Commission Recommendation of 27 November 2013 on the right to legal aid for suspects or accused persons in criminal proceedings". Therefore it seems appropriate to keep a similar reference in this directive (without prejudice to the good reasons in favour of using also the more general term "the possibilities available")

Amendment 137 **Judith Sargentini**

Proposal for a directive **Article 4 a (new)**

Text proposed by the Commission

Amendment

Article 4 a

Access to ordinary legal aid

1. Member States shall ensure that the persons referred to in Article 4(1) have access to legal aid if they lack sufficient financial resources to meet some or all of

the costs of the defence and the proceedings as a result of their economic situation ('means test') and/or when such aid is required in the interests of justice ('merits test').

2. The assessment of the person's economic situation shall be made on the basis of objective factors, such as income, capital, family situation, standard of living on the one hand and the cost of a defence lawyer on the other hand.

3. The assessment of legal aid being required in the interests of justice shall include an assessment of the complexity of the case, the social and personal situation of the person concerned, the seriousness of the offence and the severity of the potential penalty that may be imposed.

4. Member States shall make all relevant information on legal aid in criminal proceedings easily accessible and understandable for suspects or accused persons and requested persons, including information on how and where to apply for such aid, transparent criteria on eligibility for legal aid, as well as information on the possibilities available in circumstances where access to legal aid is denied or a legal aid lawyer provides insufficient legal assistance.

5. Decisions on whether or not to grant legal aid, and the appointment of lawyers, should be made promptly by an independent competent authority. Member States shall ensure that the responsible authorities make decisions diligently and that there are substantial guarantees against arbitrariness.

Or. en

Amendment 138
Rachida Dati

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Proposal for a directive
Article 4 a (new)

Text proposed by the Commission

Amendment

Article 4a

Access to ordinary legal aid

1. Member States shall ensure that the persons referred to in Article 4(1) have access to ordinary legal aid in accordance with the rules in force in the Member States in cases where they lack sufficient financial resources to meet some or all of the costs of the defence and the proceedings ('means test') and/or when such aid is required in the interests of justice ('merits test').

Member States shall ensure that ordinary legal aid is provided to the extent necessary to effectively exercise the right of access to a lawyer under Directive 2013/48/EU, in particular having regard to Article 3(3) of that Directive.

3. Member States shall draw up clear and precise criteria for determining whether or not to grant legal aid. They shall ensure that information on the granting of legal aid in criminal proceedings is accessible to and readily understandable for the persons concerned.

Or. fr

Justification

In order to guarantee the right to due process throughout criminal proceedings and to enhance mutual trust between Member States in each other's criminal justice systems, the scope of this directive should be extended to include ordinary legal aid for suspects and accused persons who are deprived of liberty.

Amendment 139
Judith Sargentini

Proposal for a directive
Article 4 b (new)

Text proposed by the Commission

Amendment

Article 4 b

Effectiveness and quality of legal aid

1. Ordinary legal aid shall be provided at all stages of the criminal justice process.

2. In order to ensure the effectiveness of the legal aid with a view to safeguarding the right to a fair trial, Member States shall ensure, inter alia, that:

(a) systems ensuring the quality and independence of legal aid lawyers are put in place or maintained, in particular a system of accreditation for legal aid lawyers, education and continuous professional training which ensures that legal aid lawyers contribute to the effective exercise of the rights of the defence;

(b) the preferences and wishes of the suspect or accused person and requested person are taken into account by the national legal aid systems in the choice of the legal aid lawyer, as far as possible;

(c) continuity in legal representation, if the suspect or accused person and requested person so wish, is ensured;

(d) suspect or accused person and requested person have the right to have the legal aid lawyer assigned to them replaced at least once, if they deem that the legal aid lawyer provides insufficient legal assistance;

(e) adequate funding and resources are provided and budgetary autonomy is guaranteed for efficient functioning of the legal aid system;

(f) legal aid fees paid to lawyers reflect the complexity of the work involved and are proportionate to the nature and complexity of the case, the specific needs

of the client, as well as the length of the proceedings.

Or. en

Amendment 140

Axel Voss

Proposal for a directive

Article 5 – title

Text proposed by the Commission

Amendment

Legal aid for requested persons

Provisional ordinary legal aid for requested persons

Or. de

Justification

In the interests of clarity, Article 5 should contain only the rights applicable in the European Arrest Warrant procedure, whilst Article 4 should contain the rights applicable in the prosecution procedure.

Amendment 141

Birgit Sippel, Sylvia-Yvonne Kaufmann

Proposal for a directive

Article 5 – paragraph 1

Text proposed by the Commission

Amendment

1. The executing Member State shall ensure that requested persons have the right to legal aid **upon arrest pursuant to** a European arrest warrant until they are surrendered, or, in cases of non-surrender, until the decision on surrender has become final.

1. The executing Member State shall ensure that requested persons have the right to **provisional** legal aid **and to legal aid once** a European arrest warrant **has been issued** until they are surrendered, or, in cases of non-surrender, until the decision on surrender has become final.

Or. en

Justification

The right to legal aid should exist upon issuance of a European arrest warrant and not only upon the arrest pursuant to it. This ensures that the requested person, even if not yet arrested, can already take appropriate legal measures from the very beginning of the warrant.

Amendment 142

Timothy Kirkhope, Helga Stevens, Jussi Halla-aho
on behalf of the ECR Group

Proposal for a directive **Article 5 – paragraph 2**

Text proposed by the Commission

2. The issuing Member State shall ***ensure that*** requested persons, ***that exercise*** their right to appoint a lawyer in the issuing Member State to assist the lawyer in the executing Member State, according to Article 10 of Directive 2013/48/EU, ***have the right to*** legal aid in that Member State for the purpose of the European arrest warrant proceedings in the executing Member State.

Amendment

2. The issuing Member State shall ***fully assess whether it is proportionate and in the interests of justice, for the*** requested persons ***that are exercising*** their right to appoint a lawyer in the issuing Member State to assist the lawyer in the executing Member State, according to Article 10 of Directive 2013/48/EU, ***to be eligible for*** legal aid in that Member State for the purpose of the European arrest warrant proceedings in the executing Member State;

Or. en

Amendment 143

Caterina Chinnici

Proposal for a directive **Article 5 – paragraph 3**

Text proposed by the Commission

3. The ***right to legal aid referred to in paragraphs 1 and 2 may be subject to an*** assessment of the ***means of the requested person and/or whether it is in the interests of justice to provide legal aid, according to the applicable*** eligibility criteria ***in the***

Amendment

3. The assessment of the ***application for ordinary legal aid submitted by the requested person shall be based on the*** eligibility criteria ***as are laid down in Article 4a.***

Member State in question.

Or. en

Justification

The aim of the amendment is to clarify that the various conditions provided in Article 4a should only apply - even in this case - on the requests for "ordinary" legal aid. On the other hand, the application of the requested person for "provisional" legal aid should not be verified under the conditions included in Article 4a.

Amendment 144

Rachida Dati

Proposal for a directive

Article 5 – paragraph 3

Text proposed by the Commission

3. The right to legal aid referred to in paragraphs 1 and 2 may be subject to an assessment of the means of the requested person and/or whether it is in the interests of justice to provide legal aid, according to the applicable eligibility criteria in the Member State in question.

Amendment

3. The right to legal aid referred to in paragraphs 1 and 2 may be subject to an assessment of the means of the requested person ***in Member States in which legal aid is subject to a means test*** and/or whether it is in the interests of justice to provide legal aid ***in Member States in which legal aid is subject to a merits test***, according to the applicable eligibility criteria in the Member State in question.

Or. fr

Justification

This directive allows for the differences between Member State criminal justice systems. It must therefore be applied in accordance with the rules on legal aid that are in force in the Member States.

Amendment 145

Birgit Sippel, Sylvia-Yvonne Kaufmann

Proposal for a directive

Article 5 a (new)

Text proposed by the Commission

Amendment

Article 5 a

Appeals and remedies

1. Any person who applies for legal aid under this Directive shall have the right to appeal a decision refusing legal aid before an independent court, with a view to preserving the right to a fair trial and the right to defence.

2. Member States shall ensure that suspects, accused persons and requested persons have an effective remedy if their rights under this Directive have been breached. Those remedies shall include a right to judicial review where access to legal aid has been undermined or delayed or if persons have not been adequately informed of their rights to provisional legal aid and to legal aid.

Or. en

Amendment 146

Axel Voss

Proposal for a directive

Article 5 a (new)

Text proposed by the Commission

Amendment

Article 5 a

The executing Member State shall ensure that, until a final decision on ordinary legal aid in line with Article 4(1) is taken, persons concerned shall have the right to provisional legal aid in accordance with Article 4(2), (3) and (5) of this Directive. The Directive shall apply mutatis mutandis in European Arrest Warrant proceedings in the executing Member State whenever an arrest is made under the Warrant.

Justification

In the interests of clarity, Article 5 should contain only the rights applicable in the European Arrest Warrant procedure, whilst Article 4 should contain the rights applicable in the prosecution procedure. This amendment contains a provision in line with the provisional legal aid provisions for accused persons and suspects, as set out in Article 4.

Amendment 147
Judith Sargentini

Proposal for a directive
Article 5 a (new)

Text proposed by the Commission

Amendment

Article 5 a

Remedies

Member States shall ensure that suspects, accused and requested persons have a right to judicial review if access to legal aid has been undermined, delayed or denied in full or in part, or if they have not been adequately informed of their right to legal aid.

Amendment 148
Rachida Dati

Proposal for a directive
Article 5 a (new)

Text proposed by the Commission

Amendment

Article 5a

Legal aid quality guarantees

1. Member States shall be responsible for taking the necessary action to guarantee that the legal aid services provided are of

a sufficiently high standard to ensure that the right to due process is upheld. Member States shall accordingly take effective steps to ensure that the services provided by the lawyers that have been assigned to cases afford suspects and accused persons deprived of liberty a high-quality defence.

2. Such guarantees may include accreditation systems for legal aid lawyers. Appropriate training for staff with responsibility for legal aid matters may also be provided.

Or. fr

Justification

In order to guarantee the right to due process, Member States have a duty to take effective steps to ensure that legal aid is of a high standard.

Amendment 149
Axel Voss

Proposal for a directive
Article 5 b (new)

Text proposed by the Commission

Amendment

Article 5 b

Member States shall ensure that adequate provisional legal aid is provided and that the right of requested persons to a lawyer is guaranteed, as provided for by Directive 2013/48/EU and in particular Article 10(2) thereof.

Or. de

Justification

In the interests of clarity, Article 5 should contain only the rights applicable in the European Arrest Warrant procedure, whilst Article 4 should contain the rights applicable in the prosecution procedure. This amendment contains a provision in line with the provisional

legal aid provisions for accused persons and suspects, as set out in Article 4.

Amendment 150

Timothy Kirkhope, Helga Stevens, Jussi Halla-aho
on behalf of the ECR Group

Proposal for a directive
Article 6 – paragraph 1

Text proposed by the Commission

Amendment

1. Member States shall collect data with regard to how the rights in Article 4 and Article 5 have been implemented.

deleted

Or. en

Amendment 151

Eleftherios Synadinos

Proposal for a directive
Article 6 – paragraph 1

Text proposed by the Commission

Amendment

1. Member States shall collect data with regard to how the rights in Article 4 and Article 5 have been implemented.

1. Member States shall collect data with regard to how the rights in Article 4 and Article 5 have been implemented, ***so as to ensure full personal data protection for suspects or accused persons.***

Or. el

Amendment 152

Axel Voss

Proposal for a directive
Article 6 – paragraph 1

Text proposed by the Commission

Amendment

1. Member States shall collect data with regard to how the rights in Article 4 and

1. Member States shall collect ***reliable available*** data with regard to how the rights

Article 5 have been implemented.

in Article 4 and Article 5 have been implemented.

Or. de

Amendment 153
Rachida Dati

Proposal for a directive
Article 6 – paragraph 1

Text proposed by the Commission

Amendment

1. Member States shall collect data with regard to how the rights in *Article 4* and *Article 5* have been implemented.

1. Member States shall collect **relevant** data with regard to how the rights in **Articles 4, 4a, 5 and 5a** have been implemented.

Or. fr

Justification

Member States should collect relevant data on the arrangements for implementing the rights laid down in this directive, with a view to assessing the effectiveness of the systems in place.

Amendment 154
Timothy Kirkhope, Helga Stevens, Jussi Halla-aho
on behalf of the ECR Group

Proposal for a directive
Article 6 – paragraph 2

Text proposed by the Commission

Amendment

2. Member States shall by [36 months after publication of this Directive] and every two years thereafter, send the Commission such data.

deleted

Or. en