



EUROPEAN PARLIAMENT

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Committee on Civil Liberties, Justice and Home Affairs

2011/0154(COD)

22.3.2012

AMENDMENTS 44 - 177

Draft report
Elena Oana Antonescu
(PE474.063v02-00)

on the proposal for a directive of the European Parliament and of the Council
on the right of access to a lawyer in criminal proceedings and on the right to
communicate upon arrest

Proposal for a directive
(COM(2011)0326 – C7-0157/2011 – 2011/0154(COD))

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United in diversity

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Amendment 44
Elena Oana Antonescu, Simon Busuttil

Draft legislative resolution
Paragraph 1 – point 1a (new)

Draft legislative resolution

Amendment

1a. Approves its statement annexed to this resolution;

For information, the text of the statement is:

‘Article 47 of the Charter of Fundamental Rights of the European Union provides that legal aid shall be made available to those who lack sufficient resources in so far as such aid is necessary to ensure effective access to justice.

The Roadmap on procedural rights underlines that the right to legal aid should ensure effective access to the right to legal advice.

Having regard to these provisions, considering the need for all the persons to have an effective access to justice and emphasizing the importance of ensuring equal access to justice for all the citizens,

The European Parliament calls on the Commission to come up with a proposal on legal aid at the earliest.’

Or. en

Justification

This statement needs to be referred to in the legislative resolution.

Amendment 45
Axel Voss

Proposal for a directive
Title

Text proposed by the Commission

Amendment

Proposal for a DIRECTIVE OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL on the right of access to a lawyer in criminal proceedings and on the right to communicate upon arrest

Does not apply to English text.

Or. de

Justification

Does not apply to English text.

Amendment 46
Hubert Pirker

Proposal for a directive
Recital 6 a (new)

Text proposed by the Commission

Amendment

(6a) The term ‘lawyer’ should be regarded as including any person who is qualified under the national law of the Member State concerned to provide legal advice and assistance to suspects and accused persons and to represent them in court.

Or. de

Amendment 47
Axel Voss

Proposal for a directive
Recital 6 a (new)

Text proposed by the Commission

Amendment

(6a) The term ‘lawyer’ should be regarded as including any person who is qualified under the national law of the Member State concerned to provide legal advice and assistance to suspects and accused persons.

Amendment 48
Teresa Jiménez-Becerril Barrio

Proposal for a directive
Recital 6 a (new)

Text proposed by the Commission

Amendment

(6a) In the advancement of mutual trust of Member States in terms of criminal justice we must ensure that not only the rights of the offender are guaranteed, but also the rights of the victims. Mutual recognition of minimum standards across the EU will not only benefit the principle of a common area of openness and security, but will also increase the confidence of citizens in their national judicial systems.

Or. en

Amendment 49
Louis Michel

Proposal for a directive
Recital 7 a (new)

Text proposed by the Commission

Amendment

(7a) An official interview means the questioning by competent authorities of a suspect or accused person regarding his involvement in a criminal offence, irrespective of the place where it is conducted. This notion should not encompass questioning by the police or other law enforcement authorities whose sole purpose is the identification of the person concerned or the verification of the possession of weapons or other similar safety issues.

Amendment 50
Arkadiusz Tomasz Bratkowski

Proposal for a directive
Recital 7 a (new)

Text proposed by the Commission

Amendment

(7a) Member States should ensure that suspects and accused persons have the right of access to a lawyer, promptly, before the person is interviewed by the law enforcement or judicial authorities, as from when the person is formally charged of having committed a criminal offence, as from the outset of deprivation of liberty, including detention and during any hearing. In any case, suspects and accused persons should be granted access to a lawyer during criminal proceedings before a court, if they wish to be assisted by a lawyer.

This Directive focuses on the right of access to a lawyer, which may, but does not have to be exercised by the suspect or accused person, depending on his will. Therefore the directive should not affect the national provisions concerning mandatory defence.

Or. en

Justification

The recital aims to clarify the scope of the Directive. It should be mentioned at this occasion that the purpose of a directive is not to set up situations in which the appointment of a lawyer is mandatory to start or conduct the proceedings. As interpreted mainly from art. 9 the directive makes the lawyer's presence dependent on the will of a person.

Amendment 51
Jan Mulder, Wim van de Camp

Proposal for a directive
Recital 8

Text proposed by the Commission

(8) The European Court of Human Rights has consistently held that the suspect or accused person should have access to a lawyer ***at the initial stages of police questioning, and in any event*** from the start of detention, to protect the right to a fair trial, and in particular the privilege against self-incrimination and to avoid ill treatment;

Amendment

(8) The European Court of Human Rights has consistently held that the suspect or accused person should have access to a lawyer from the start of detention, to protect the right to a fair trial, and in particular the privilege against self-incrimination and to avoid ill treatment.

Or. en

Amendment 52
Véronique Mathieu

Proposal for a directive
Recital 8

Text proposed by the Commission

(8) The European Court of Human Rights has consistently held that the suspect or accused person should have access to a lawyer at the initial stages of police questioning, and in any event from the start of detention, to protect the right to a fair trial, and in particular the privilege against self-incrimination and to avoid ill treatment;

Amendment

(8) The European Court of Human Rights has consistently held that the suspect or accused person should have access to a lawyer at the initial stages of police questioning, and in any event from the start of detention, to protect the right to a fair trial, and in particular the privilege against self-incrimination and to avoid ill treatment; ***Nevertheless, with a view to respecting a balance between the rights of the defence and the requirements of the investigation, the right to be assisted by a lawyer at an interrogation or hearing should not significantly delay the start of the hearing or interrogation.***

Or. fr

Justification

It is important to preserve the right of access to a lawyer from the interrogation and hearing

stage onwards. Nevertheless, a proper balance needs to be struck between the rights of the defence and the requirements of the investigation; this right should not make it possible repeatedly to delay hearings and interrogations on the grounds that the lawyer cannot attend, thus significantly disrupting the conduct of the investigation.

Amendment 53
Cornelis de Jong

Proposal for a directive
Recital 8 a (new)

Text proposed by the Commission

Amendment

(8a) In order for this Directive to be applicable in practice as regards the carrying out of regular police work the right of access to a lawyer does not apply when suspects are questioned in the streets without being arrested and deprived of their liberty, for example in the case of a regular on-the-spot police control.

Or. en

Amendment 54
Jan Mulder, Wim van de Camp

Proposal for a directive
Recital 8 a (new)

Text proposed by the Commission

Amendment

(8a) The suspect or accused person has a right to legal assistance during an official interview that takes place in a police station or in a comparable place. A place is comparable to a police station when that place is, like a police station, suitable and equipped for interviewing suspected or accused persons about their alleged engagement in a criminal offence.

Or. en

Amendment 55
Jan Mulder, Wim van de Camp

Proposal for a directive
Recital 9

Text proposed by the Commission

Amendment

(9) A similar right to the presence of a lawyer should be granted every time that national law expressly allows or demands the presence of the suspected or accused person at a procedural step or evidence gathering such as a search; in these cases, in fact, the presence of the lawyer can strengthen the rights of the defence without affecting the need to preserve the confidentiality of certain investigative acts, since the presence of the person excludes the confidential nature of the acts in question; this right should be without prejudice to the need to secure evidence which by its very nature is liable to be altered, removed or destroyed if the competent authority was to wait until the arrival of a lawyer;

deleted

Or. en

Amendment 56
Louis Michel

Proposal for a directive
Recital 9

Text proposed by the Commission

Amendment

(9) A similar right to the presence of a lawyer should be granted every time that national law expressly allows or demands the presence of the suspected or accused person at a procedural step or evidence gathering such as a search; in these cases, in fact, the presence of the lawyer

deleted

can strengthen the rights of the defence without affecting the need to preserve the confidentiality of certain investigative acts, since the presence of the person excludes the confidential nature of the acts in question; this right should be without prejudice to the need to secure evidence which by its very nature is liable to be altered, removed or destroyed if the competent authority was to wait until the arrival of a lawyer;

Or. en

Amendment 57
Véronique Mathieu

Proposal for a directive
Recital 9

Text proposed by the Commission

(9) A similar right to the presence of a lawyer should be granted every time that national law expressly allows or demands the presence of the suspected or accused person at a procedural step or evidence gathering such as a search; in these cases, in fact, the presence of the lawyer can strengthen the rights of the defence without affecting the need to preserve the confidentiality of certain investigative acts, since the presence of the person excludes the confidential nature of the acts in question; this right should be without prejudice to the need to secure evidence which by its very nature is liable to be altered, removed or destroyed if the competent authority was to wait until the arrival of a lawyer;

Amendment

(9) A similar right to the presence of a lawyer should be granted every time that national law expressly allows or demands the presence of the suspected or accused person at a procedural step or evidence gathering such as a search, ***except in the case of purely technical and scientific acts such as fingerprinting, biological sampling or legal medical observations***; in these cases, in fact, the presence of the lawyer can strengthen the rights of the defence without affecting the need to preserve the confidentiality of certain investigative acts, since the presence of the person excludes the confidential nature of the acts in question; this right should be without prejudice to the need to secure evidence which by its very nature is liable to be altered, removed or destroyed if the competent authority was to wait until the arrival of a lawyer;

Or. fr

Justification

Measures such as fingerprinting and legal medical observations are purely technical acts that are necessary to the investigation; the lawyer's role in such circumstances is very limited and the rights of the defence are not in question. The harmonisation of legal aid needs to be anticipated and consideration given to the costs that would arise were a lawyer to be present for all these technical measures.

Amendment 58 **Hubert Pirker**

Proposal for a directive **Recital 9**

Text proposed by the Commission

(9) A similar right to the presence of a lawyer should be granted every time that national law expressly allows or demands the presence of the suspected or accused person at a procedural step or evidence gathering such as a search; in these cases, in fact, the presence of the lawyer can strengthen the rights of the defence without affecting the need to preserve the confidentiality of certain investigative acts, since the presence of the person excludes the confidential nature of the acts in question; this right should be without prejudice to the need to secure evidence which by its very nature is liable to be altered, removed or destroyed if the competent authority was to wait until the arrival of a lawyer.

Amendment

(9) A similar right to the presence of a lawyer should be granted every time that national law expressly allows or demands the presence of the suspected or accused person at a procedural step or evidence gathering such as a search; in these cases, in fact, the presence of the lawyer can strengthen the rights of the defence without affecting the need to preserve the confidentiality of certain investigative acts, since the presence of the person excludes the confidential nature of the acts in question; ***Once appointed, the lawyer should be able to ask to be notified that such acts are to be performed. If he was notified in sufficiently good time to enable him to be present when the acts in question are performed, but is not present, this should not prevent the competent authorities from carrying out the investigative measures concerned.*** This right should be without prejudice to the need to secure evidence which by its very nature is liable to be altered, removed or destroyed if the competent authority was to wait until the arrival of a lawyer.

Or. de

Amendment 59
Jan Mulder, Wim van de Camp

Proposal for a directive
Recital 10

Text proposed by the Commission

(10) To be effective, access to a lawyer should entail the possibility for the lawyer to carry out all the wide range of activities which pertain to legal counselling, as the European Court of Human Rights has held. ***This should include active participation in any interrogation or hearing, meetings with the client to discuss the case and prepare the defence, the search for exculpatory evidence, support to a distressed client and control of detention conditions;***

Amendment

(10) To be effective, access to a lawyer should entail the possibility for the lawyer to carry out all the wide range of activities which pertain to legal counselling, as the European Court of Human Rights has held.

Or. en

Amendment 60
Simon Busuttil

Proposal for a directive
Recital 10

Text proposed by the Commission

(10) To be effective, access to a lawyer should entail the possibility for the lawyer to carry out all the wide range of activities which pertain to legal counselling, as the European Court of Human Rights has held. This should include ***active*** participation in any interrogation or hearing, meetings with the client to discuss the case and prepare the defence, the search for exculpatory evidence, support to a distressed client and control of detention conditions;

Amendment

(10) To be effective, access to a lawyer should entail the possibility for the lawyer to carry out all the wide range of activities which pertain to legal counselling, as the European Court of Human Rights has held. This should include participation in any interrogation or hearing, meetings with the client to discuss the case and prepare the defence, the search for exculpatory evidence, support to a distressed client and control of detention conditions;

Or. en

Amendment 61
Hubert Pirker

Proposal for a directive
Recital 10

Text proposed by the Commission

(10) To be effective, access to a lawyer should entail the possibility for the lawyer to carry out all the wide range of activities which pertain to legal counselling, as the European Court of Human Rights has held. This should include **active** participation in any interrogation **or hearing**, meetings with the client to discuss the case and prepare the defence, the search for exculpatory evidence, support to a distressed client and control of detention conditions;

Amendment

(10) To be effective, access to a lawyer should entail the possibility for the lawyer to carry out all the wide range of activities which pertain to legal counselling, as the European Court of Human Rights has held. This should include participation in any interrogation, **with the possibility, once the law-enforcement or judicial authorities have completed their work, of putting additional questions, requesting clarification or making statements, and active participation in court hearings**, meetings with the client to discuss the case and prepare the defence, the search for exculpatory evidence, support to a distressed client and control of detention conditions

Or. de

Amendment 62
Arkadiusz Tomasz Bratkowski

Proposal for a directive
Recital 10

Text proposed by the Commission

(10) To be effective, access to a lawyer should entail the possibility for the lawyer to carry out all the wide range of activities which pertain to legal counselling, as the European Court of Human Rights has held. This should include active participation in any **interrogation or hearing**, meetings with the client to discuss the case and prepare the defence, the search for exculpatory evidence, support to a

Amendment

(10) To be effective, access to a lawyer should entail the possibility for the lawyer to carry out all the wide range of activities which pertain to legal counselling, as the European Court of Human Rights has held. This should include active participation in any **hearing or any interview conducted by law enforcement or judicial authority**, meetings with the client to discuss the case and prepare the defence, the search for

distressed client and *control of detention conditions*;

exculpatory evidence *and* support to a distressed client.

Moreover, whenever the directive refers to the effective rights Member States should take all the necessary and reasonable efforts to facilitate the exercise of the rights conferred upon the suspect or accused person. This could be done through practical arrangements such as provision of a list of lawyers or a telephone in order to enable the person to contact a lawyer.

Or. en

Justification

This amendment aims to align the recital to the amendments made to Article 4 paragraph 2 and to Article 4 paragraph 4. At the same time more guidelines could be provided for the Member State as to how they can assure the effectiveness of the rights in other way than through providing legal aid. The European Court of Human Rights underlines that the rights should be practicable and effective though it does not explain how this should be guaranteed. The preamble could indicate that Member States should take all the necessary (and reasonable – meaning accustomed to the particular situation) efforts to do it, mainly through practical arrangements which aim is to facilitate the exercise of the rights.

Amendment 63 **Cornelis de Jong**

Proposal for a directive **Recital 10 a (new)**

Text proposed by the Commission

Amendment

(10a) As poor detention conditions may be indirectly used as an instrument to pressure the detainee into unlawful cooperation, the lawyer should have the right to check the adequacy of the detention conditions and verify whether they respect the fundamental rights as set out by the European Court of Human Rights.

Or. en

Amendment 64
Véronique Mathieu

Proposal for a directive
Recital 11

Text proposed by the Commission

(11) The duration and frequency of meetings between the suspect or accused person and their lawyer depend on the circumstances of every proceeding, notably on the complexity of the case and the procedural steps applicable. ***It should therefore not be limited in a general way, as this could prejudice the effective exercise of the rights of defence;***

Amendment

(11) The duration and frequency of meetings between the suspect or accused person and their lawyer depend on the circumstances of every proceeding, notably on the complexity of the case and the procedural steps applicable. ***A lawyer and their client should be able to talk regularly, at least before each hearing, so as to allow substantial communication between them. Such talks should not have the effect of significantly delaying the conduct of the investigation;***

Or. fr

Justification

The right of communication between a lawyer and their client is essential. Nevertheless, it should not be used to gain time and significantly delay the conduct of the investigation.

Amendment 65
Jan Mulder, Wim van de Camp

Proposal for a directive
Recital 11 a (new)

Text proposed by the Commission

Amendment

(11a)) In order for the right to legal assistance to be practical and effective the suspect who has no lawyer should be provided with one when he is deprived of liberty. In proceedings before the court the suspect who has no lawyer should be provided with one when the interest of justice so require. There is no obligation

to provide a lawyer when the suspect or accused person has waived his right to legal assistance in accordance with Article 9. Neither is it obligatory to provide a lawyer in the pre-trial stage when the suspected or accused person is not deprived of his liberty or in the trial stage when the interests of justice do not require that a lawyer is provided. In these cases the obligation of Member States to ensure the right to legal assistance is met when the lawyer is allowed to give legal assistance.

Or. en

Amendment 66
Axel Voss, Hubert Pirker, Monika Hohlmeier

Proposal for a directive
Recital 14

Text proposed by the Commission

(14) Since confidentiality of communication between a suspect or accused person and their lawyer is key to ensuring the effective exercise of the rights of the defence, Member States should be required to uphold and safeguard the confidentiality of meetings between the lawyer and the client and of any other form of communication permitted under national law. Confidentiality should **not** be **subject to any exception**;

Amendment

(14) Since confidentiality of communication between a suspect or accused person and their lawyer is key to ensuring the effective exercise of the rights of the defence, Member States should be required to uphold and safeguard the confidentiality of meetings between the lawyer and the client and of any other form of communication permitted under national law. **Exceptions to the confidentiality rule** should be **made only on the basis of strict legal criteria**.

Or. de

Justification

As a matter of principle, the right of access to a lawyer, the right to communicate upon arrest and the confidentiality of the conversations between a suspect or an accused person and his lawyer should not be restricted. However, there are exceptional cases in which the need to maintain a balance between the rights of the suspect or accused person and effective criminal justice makes restrictions essential, subject to strict criteria.

Amendment 67
Hubert Pirker

Proposal for a directive
Recital 14 a (new)

Text proposed by the Commission

Amendment

(14a) It should be permissible to monitor contacts between a suspect or an accused person and his lawyer only in exceptional circumstances and if both the suspect or accused person and the lawyer have been notified in advance, so that the monitoring is not carried out in secret.

Or. de

Amendment 68
Axel Voss, Manfred Weber, Hubert Pirker, Monika Hohlmeier

Proposal for a directive
Recital 14 a (new)

Text proposed by the Commission

Amendment

(14a) Since the purpose of any criminal proceedings must be to establish the truth, in exceptional, serious circumstances Member States should continue to enjoy the option of departing from the principle of confidentiality if there is a danger that a confidential conversation could give rise to interference with evidence.

Or. de

Amendment 69
Véronique Mathieu

Proposal for a directive
Recital 14 a (new)

Text proposed by the Commission

Amendment

(14a) The lawyer should respect the secrecy of the investigation. This obligation is necessary for the proper conduct of the investigation;

Or. fr

Amendment 70
Jan Mulder, Wim van de Camp

Proposal for a directive
Recital 15

Text proposed by the Commission

Amendment

(15) Derogations from the right of access to a lawyer and the right to communicate upon arrest should be permitted only in exceptional circumstances, in line with case law of the European Court of Human Rights, where there are compelling reasons relating to the urgent need to avert serious adverse consequences for the life or physical integrity of another person and where there are no other less restrictive means to achieve the same result, such as, in cases of a risk of collusion, replacement of the lawyer chosen by the suspect or accused person or nomination of a different third party to communicate with;

deleted

Or. en

Amendment 71
Véronique Mathieu

Proposal for a directive
Recital 17 a (new)

Text proposed by the Commission

Amendment

(17a) Account should be taken of the urgent needs of the investigation and, in particular, of specific circumstances linked to the fight against terrorism and organised crime in relation to the application of the rights granted by this Directive;

Or. fr

Amendment 72
Sarah Ludford

Proposal for a directive
Recital 17 a (new)

Text proposed by the Commission

Amendment

(17a) The right of the suspect or accused person to communicate with his lawyer should ordinarily include the opportunity of the person concerned to meet his lawyer. In respect of certain relatively minor cases however, the right to obtain legal assistance can be by telephone.

Or. en

Amendment 73
Arkadiusz Tomasz Bratkowski

Proposal for a directive
Recital 18

Text proposed by the Commission

Amendment

(18) The suspect or accused person should be allowed to waive the right to a lawyer, as long as they are fully aware of the consequences of the waiver, notably because they have ***met*** with ***a lawyer***

(18) The suspect or accused person should be allowed to waive the right to a lawyer, as long as they are fully aware of the consequences of the waiver, notably because they have ***been provided, orally or***

before making this decision and have the necessary capacity to understand these consequences and provided that the waiver is given freely and unequivocally. The suspect or accused person should be able to revoke the waiver at any time in the course of the proceedings;

in writing, with *sufficient* and *clear information about these consequences* *and* have the necessary capacity to understand these consequences and provided that the waiver is given freely and unequivocally. The suspect or accused person should be able to revoke the waiver at any time in the course of the proceedings. *The revocation of the waiver should not lead to the obligation to repeat the criminal proceedings or any part thereof. In case of revocation the directive should be applied from that moment in time onwards.*

Or. en

Justification

If the person waived his right the waiver should be applicable till the person changes his mind. Asking him at the very beginning of the trial phase is not necessary and does not seem to serve any purpose. The person should have the right to change his mind at any time, not only just before the trial starts. The directive should not provide any moment in time which would limit the suspect or accused person's right in that regard. At the same time it is important to balance the rights of the suspect and accused persons and the effectiveness of the criminal proceedings. Thus, the revocation of the right should not lead to the obligation to repeat the criminal proceedings or any part thereof, if conducted without the access to a lawyer as a result of a waiver. Otherwise the right could be used to obstruct the criminal proceedings by repeatedly waiving and claiming the right of access and forcing authorities to repeat procedural acts, that have been lawfully carried out already. In case of revocation the directive should be applied from that moment in time onwards.

Amendment 74 **Jan Mulder, Wim van de Camp**

Proposal for a directive **Recital 22**

Text proposed by the Commission

(22) That person should also have the possibility to have a lawyer in the issuing Member State to assist the lawyer in the executing Member State in specific cases during the surrender proceedings without prejudice to the deadlines set out in

Amendment

deleted

**Council Framework Decision
2002/584/JHA; that lawyer should be able
to assist the lawyer in the executing
Member State when exercising the
person's rights under the Council
Framework Decision 2002/584/JHA in
the executing State, in particular in
respect of the grounds of refusal under its
Articles 3 and 4; since the European
Arrest Warrant is predicated upon the
principle of mutual recognition, this
should not entail any right to question the
merits of the case in the executing
Member State; as there is no
incompatibility between defence rights
and mutual recognition; enhancing fair
trial rights both in the executing and in
the issuing Member State will boost
mutual trust;**

Or. en

**Amendment 75
Jan Mulder, Wim van de Camp**

**Proposal for a directive
Recital 23**

Text proposed by the Commission

Amendment

**(23) In order to make the right of access
to a lawyer in the issuing Member State
effective, the executing judicial authority
should promptly notify the issuing judicial
authority of the arrest of the person and
of his request to have access to a lawyer in
the issuing Member State;**

deleted

Or. en

**Amendment 76
Arkadiusz Tomasz Bratkowski**

Proposal for a directive
Recital 24

Text proposed by the Commission

(24) In the absence to-date of EU legislative instrument on legal aid, Member States should continue to apply their domestic provisions on legal aid, which should be in line with the Charter, the ECHR and the case-law of the European Court of Human Rights. ***Whenever new domestic provisions, enacted to implement this Directive, grant a broader right of access to a lawyer than was previously available under national law, the rules currently in place on legal aid should apply with no distinction between the two situations;***

Amendment

(24) ***This directive does not provide for the rules on legal aid. However,*** in the absence to-date of EU legislative instrument on legal aid, Member States should continue to apply their domestic provisions on legal aid, which should be in line with the Charter, the ECHR and the case-law of the European Court of Human Rights.

Or. en

Justification

This amendment aims to align the recital to the amendment made to Article 12. It should be clear that the aim of this provision is to keep up the existing standards on legal aid and not to set new obligations in this respect. As the question of legal aid is presumed to be dealt with in a separate instrument, the non-inclusion of legal aid should be clarified.

Amendment 77
Cornelis de Jong

Proposal for a directive
Recital 24

Text proposed by the Commission

(24) In the absence to-date of EU legislative instrument on legal aid, Member States should continue to apply their domestic provisions on legal aid, which should be in line with the Charter, the ECHR and the case-law of the European Court of Human Rights. ***Whenever new domestic provisions, enacted to implement this Directive, grant a broader right of***

Amendment

(24) In the absence to-date of EU legislative instrument on legal aid, Member States should continue to apply their domestic provisions on legal aid, which should be in line with the Charter, the ECHR and the case-law of the European Court of Human Rights. ***However, it should be stressed that the this directive on the right of access to a lawyer and the***

access to a lawyer *than was previously available under national law*, the *rules currently in place* on legal aid *should apply with no distinction between the two situations*;

future EU legislative instrument on legal aid *are interlinked, and that this directive cannot function properly without a well functioning instrument on legal aid which provides for enough legal certainty.*

Or. en

Amendment 78

Axel Voss

Proposal for a directive

Recital 26

Text proposed by the Commission

Amendment

(26) The European Court of Human Rights has consistently held that any adverse consequences deriving from a breach of the right to a lawyer must be undone by placing the person in the same position they would have found themselves had the breach not occurred. This may require retrial or equivalent measures if a final conviction was made in breach of the right to a lawyer;

deleted

Or. de

Amendment 79

Axel Voss, Manfred Weber

Proposal for a directive

Recital 27

Text proposed by the Commission

Amendment

(27) Since the European Court of Human Rights has established that irretrievable damage to the rights of the defence results from the use of an incriminating statement made by the suspect or accused person without access to a lawyer, Member States should be required in

deleted

principle to prohibit the use of any statements given in breach of the right of access to a lawyer as evidence against the suspect or accused person unless the use of such evidence would not prejudice the rights of the defence. This should be without prejudice to the use of statements for other purposes permitted under national law, such as the need to execute urgent investigative acts or to avoid the perpetration of other offences or serious adverse consequences for any person;

Or. de

Amendment 80
Hubert Pirker

Proposal for a directive
Recital 27

Text proposed by the Commission

(27) Since the European Court of Human Rights has established that irretrievable damage to the rights of the defence results from the use of an incriminating statement made by the suspect or accused person without access to a lawyer, Member States should ***be required*** in principle ***to*** prohibit the use of any statements given in breach of the right of access to a lawyer as evidence against the suspect or accused person unless the use of such evidence would not prejudice the rights of the defence. This should be without prejudice to the use of statements for other purposes permitted under national law, such as the need to execute urgent investigative acts or to avoid the perpetration of other offences or serious adverse consequences for any person;

Amendment

(27) Since the European Court of Human Rights has established that irretrievable damage to the rights of the defence results from the use of an incriminating statement made by the suspect or accused person without access to a lawyer, Member States should in principle prohibit the use of any statements given in breach of the right of access to a lawyer as evidence against the suspect or accused person unless the use of such evidence would not prejudice the rights of the defence. This should be without prejudice to the use of statements for other purposes permitted under national law, such as the need to execute urgent investigative acts or to avoid the perpetration of other offences or serious adverse consequences for any person; ***This should not affect the right guaranteed in some Member States to the judge hearing a case to decide independently on the admissibility of statements or other***

evidence.

Or. de

Amendment 81
Véronique Mathieu

Proposal for a directive
Recital 29 a (new)

Text proposed by the Commission

Amendment

(29a) The principle of free choice of a lawyer as enshrined in Article 6(3)(c) of the European Convention for the Protection of Human Rights and Fundamental Freedoms should also be guaranteed. In cases of terrorism and organised crime, it should be possible to derogate from this right at the request of the judicial or competent authority, in particular where there is a risk of collusion;

Or. fr

Amendment 82
Arkadiusz Tomasz Bratkowski

Proposal for a directive
Recital 30

Text proposed by the Commission

Amendment

(30) This Directive promotes the rights of the child and takes into account the Guidelines of the Council of Europe on child friendly justice, in particular its provisions on information and advice. The Directive ensures that children cannot waive their rights under this Directive when they lack the capacity to understand the consequences of the waiver. Legal **representatives** of a **suspect** or accused

(30) This Directive promotes the rights of the child and takes into account the Guidelines of the Council of Europe on child friendly justice, in particular its provisions on information and advice. The Directive ensures that children cannot waive their rights under this Directive when they lack the capacity to understand the consequences of the waiver. **The** legal **representative** of a **suspected** or accused

child should be always notified *as soon as possible* of his custody and be informed about the reasons for the custody, *unless it is against* the best interests of the child;

child should be always notified *promptly* of his custody and be informed about the reasons for the custody. *If providing such information to the child's legal representative is contrary to the best interests of the child, another suitable adult, such as a guardian or a relative should be informed instead. In accordance with the provisions of national law, Member States may ensure that specified authorities with competence for the protection of children should also be informed that a child has been deprived of his or her liberty.*

Or. en

Justification

It is in the best interest of the child for the specific authorities with competence for the protection of children to be informed about the deprivation of the liberty of the child. During the negotiation in the Council one of the delegations proposed to insert a provision relating to the information of a competent institution dealing with children protection and rights about child's custody. All delegations agreed that it could be put in the preamble and be a kind of guide but not an obligation for the Member States. It is because not in every Member States there exists such an institutions which deals (in accordance with their statutes) with these kind of cases. Therefore, it is suggested to replace the wording 'Member States should ensure...' with 'Member States may ensure...'

Amendment 83 **Birgit Sippel**

Proposal for a directive **Article 1**

Text proposed by the Commission

The Directive lays down rules concerning the right of suspects and accused persons in criminal proceedings and of persons subject to proceedings pursuant to Council Framework Decision 2002/584/JHA to *have access to* a lawyer and to communicate upon arrest with a third party.

Amendment

The Directive lays down rules concerning the right of suspects and accused persons in criminal proceedings and of persons subject to proceedings pursuant to Council Framework Decision 2002/584/JHA to *the presence of* a lawyer and to communicate upon arrest with a third party.

(This amendment applies throughout the text; its adoption will necessitate linguistic adjustments throughout the text.)

Or. de

Amendment 84
Axel Voss

Proposal for a directive
Article 2 – paragraph 1

Text proposed by the Commission

1. This Directive applies from the time a person is made aware by the competent authorities of a Member State, by official notification or otherwise, that he is suspected or accused of having committed a criminal offence until the conclusion of the proceedings, which is understood to mean the final determination of the question whether the suspected or accused person has committed the offence, including, where applicable, sentencing and the resolution of any appeal.

Amendment

1. This Directive applies from the time a person is made aware by the competent authorities of a Member State, by official notification or otherwise, that he is suspected or accused of having committed a criminal offence, **and irrespective of whether he is arrested or not**, until the conclusion of the proceedings, which is understood to mean the final determination of the question whether the suspected or accused person has committed the offence, including, where applicable, sentencing and the resolution of any appeal.

Or. de

Justification

Amplifies Amendment 28 by the rapporteur.

Amendment 85
Véronique Mathieu

Proposal for a directive
Article 2 – paragraph 1

Text proposed by the Commission

1. This Directive applies from the time a person is made aware by the competent

Amendment

1. This Directive applies from the time a person is made aware by the competent

authorities of a Member State, by official notification or otherwise, that he is suspected or accused of having committed a criminal offence until the conclusion of the proceedings, which is understood to mean the final determination of the question whether the suspected or accused person has committed the offence, including, where applicable, sentencing and the resolution of any appeal.

authorities of a Member State, by official notification or otherwise, that he or she is suspected or accused of having committed a criminal offence, ***or from the time he or she is deprived of their liberty***, until the conclusion of the proceedings, which is understood to mean the final determination of the question whether the suspected or accused person has committed the offence, including, where applicable, sentencing and the resolution of any appeal.

Or. fr

Justification

In the interest of clarity, the case of deprivation of liberty referred to in Article 3 of the Directive should also be specified here.

Amendment 86
Axel Voss

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

Text proposed by the Commission

Amendment

1a. Within the meaning of this Directive, the term ‘lawyer’ shall include any person who is qualified under the national law of the Member State concerned to provide legal advice and assistance to suspects and accused persons.

Or. de

Amendment 87
Sarah Ludford

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

Text proposed by the Commission

Amendment

1a. This Directive does not cover preliminary questioning by the police or other law enforcement officers, immediately after the apprehension of a suspect, the purpose of which is to determine whether an investigation should be started or if there are any safety issues.

Or. en

Amendment 88
Stanimir Ilchev

Proposal for a directive
Article 3 – paragraph 1 – introductory part

Text proposed by the Commission

Amendment

1. Member States shall ensure that suspects and accused persons are granted access to a lawyer ***as soon as possible and in any event***.

1. Member States shall ensure that suspects and accused persons are ***promptly*** granted access to a lawyer, ***at least***:

Or. bg

Amendment 89
Carmen Romero López, Anna Hedh

Proposal for a directive
Article 3 – paragraph 1 – introductory part

Text proposed by the Commission

Amendment

1. Member States shall ensure that suspects and accused persons are granted access to a lawyer as soon as possible and in any ***event***:

1. Member States shall ensure that suspects and accused persons are granted access to a lawyer ***of his her own choosing or to legal aid according to national legislation*** as soon as possible and in any ***of the earliest situations***:

Amendment 90
Manfred Weber

Proposal for a directive
Article 3 – paragraph 1 – introductory part

Text proposed by the Commission

1. Member States shall ensure that suspects and accused persons are granted access to a lawyer as soon as possible and in any event:

Amendment

1. Member States shall ensure that suspects and accused persons are granted ***the right of*** access to a lawyer in person as soon as possible and in any event:

Or. de

Justification

The directive is only intended to provide for access to a lawyer as soon as possible for accused persons. The original wording could have been misunderstood as meaning that a lawyer must automatically be present. The issue of legal aid will be dealt with in a future Commission proposal for a directive.

Amendment 91
Stanimir Ilchev

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

Text proposed by the Commission

(a) before the start of any questioning by the ***police*** or ***other law enforcement*** authorities;

Amendment

(a) before the start of any questioning by the ***law enforcement*** or ***judicial*** authorities, ***irrespective of whether the person is detained or not***;

Or. bg

Amendment 92
Jan Mulder, Wim van de Camp

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

Text proposed by the Commission

(a) before the start of **any questioning** by the police or other law enforcement authorities;

Amendment

(a) before the start of **an official interview** by the police or other law enforcement authorities;

Or. en

Amendment 93
Cornelis de Jong

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

Text proposed by the Commission

(a) before the start of **any questioning** by the police or other law enforcement authorities;

Amendment

(a) before the start of **an official interview** by the police or other law enforcement authorities;

Or. en

Amendment 94
Rolandas Paksas

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

Text proposed by the Commission

(a) before the start of any questioning by the police or other law enforcement authorities;

Amendment

(a) before the start of any questioning by the police or **hearing by** other law enforcement authorities;

Or. It

Amendment 95
Louis Michel

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

Text proposed by the Commission

(a) before the start of **any questioning** by the police or other law enforcement authorities;

Amendment

(a) before the start of **an official interview** by the police or other law enforcement authorities;

Or. en

Amendment 96
Stanimir Ilchev

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

Text proposed by the Commission

(b) upon carrying out any procedural or evidence-gathering act **at which the person's presence is required or permitted as a right in accordance with national law, unless this would prejudice the acquisition of evidence;**

Amendment

(b) upon **the** carrying out **of** any procedural or evidence-gathering act, **save where, and only in so far as, the authority carrying out that evidence-gathering act reasonably believes that evidence will be altered, removed or destroyed pending the lawyer's arrival;**

The authority must set out in writing the reasons for any denial of access. The suspect or accused person shall be informed of these reasons prior to the start of the evidence-gathering act and shall sign a statement to that effect.

Or. bg

Justification

The phrase 'unless this would prejudice the acquisition of evidence' is very general and could always be used to stop a defence lawyer participating in the procedural act. Certain evidence-gathering acts such as the taking of blood or DNA samples or the carrying-out of cavity searches are a serious infringement of the integrity of the individual. In such circumstances, access to a lawyer must not be subject to national law.

Amendment 97
Carmen Romero López, Anna Hedh

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

Text proposed by the Commission

(b) upon carrying out any procedural or evidence-gathering act at which the person's presence is required or permitted as a right in accordance with national law, ***unless this would prejudice the acquisition of evidence;***

Amendment

(b) upon carrying out any procedural or evidence-gathering act at which the person's presence is required or permitted as a right in accordance with national law, ***except where the person responsible for the act reasonably believes that the evidence to be gathered will be altered, removed, destroyed as a result of the passage of time needed to the lawyer to arrive;***

Or. en

Amendment 98
Stanimir Ilchev

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

Text proposed by the Commission

(c) from the outset of deprivation of liberty.

Amendment

(c) from the outset of deprivation of liberty, ***including detention;***

Or. bg

Amendment 99
Carmen Romero López, Birgit Sippel, Anna Hedh

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

Text proposed by the Commission

(c) from the outset of deprivation of liberty.

Amendment

(c) ***immediately*** from the outset of deprivation of liberty.

Amendment 100
Stanimir Ilchev

Proposal for a directive
Article 3 – paragraph 1 – point c a (new)

Text proposed by the Commission

Amendment

(ca) during any questioning;

Or. bg

Amendment 101
Stanimir Ilchev

Proposal for a directive
Article 3 – paragraph 1 – point c b (new)

Text proposed by the Commission

Amendment

(cb) from the moment the person is summoned to appear before a court having jurisdiction in criminal matters, in connection with the occurrence of the earliest of any of the events listed in this paragraph.

Upon the occurrence of any of these events, the suspect or accused person shall be provided with written information on their rights. This shall be certified in accordance with the recording procedures laid down in the law of the Member State concerned.

Or. bg

Amendment 102
Birgit Sippel, Jan Philipp Albrecht, Carmen Romero López, Anna Hedh

Proposal for a directive
Article 3 – paragraph 1 a (new)

Text proposed by the Commission

Amendment

1a. Member States shall notify suspects and accused persons that they have a right of access to a lawyer in accordance with the Directive on the right to information in criminal proceedings. They shall also ensure that this right is communicated in an appropriate manner that can be understood by all persons, including children and vulnerable.

Or. en

Amendment 103
Jan Mulder, Wim van de Camp

Proposal for a directive
Article 3 – paragraph 2 a (new)

Text proposed by the Commission

Amendment

2a. An official interview in the meaning of this Article is an interview of the suspect or accused person that takes place in a police station or another appropriate place.

Or. en

Amendment 104
Cornelis de Jong

Proposal for a directive
Article 3 – paragraph 2 a (new)

Text proposed by the Commission

Amendment

2a. An official interview in the meaning of this Article is an interview of the suspect or accused person that takes place

in a police station or any other venue chosen to conduct the interview.

Or. en

Amendment 105
Sarah Ludford

Proposal for a directive
Article 3 – paragraph 2 a (new)

Text proposed by the Commission

Amendment

2a. Notwithstanding provisions of national law concerning the mandatory presence of a lawyer, in all cases where the suspect or accused person is deprived of liberty, and in any event during the trial stage before a court having jurisdiction in criminal matters, Member States shall ensure that a suspect or accused person is effectively able to exercise his right of access to a lawyer, unless he has waived this right in accordance with Article 9.

Before a case is before a court having jurisdiction in criminal matters, Member States may, but are not obliged to, assist a person who is not detained in exercising his right of access to a lawyer. They shall at least provide information on this right in accordance with the Directive on right to information in criminal proceedings 2010/0215(COD). In any event, Member States should not prevent a person from contacting or consulting with a lawyer on matters concerning his defence.

Or. en

Amendment 106
Sarah Ludford

Proposal for a directive
Article 3 – paragraph 2 b (new)

Text proposed by the Commission

Amendment

2b. In cases involving minor offences, the access to a lawyer for the suspect or accused person may be via telephone.

Or. en

Amendment 107
Stanimir Ilchev

Proposal for a directive
Article 4 – paragraph 1

Text proposed by the Commission

Amendment

1. The suspect or accused person shall have the right to meet with the lawyer representing him.

1. The suspect or accused person shall have the right to meet **privately** with the lawyer representing him.

Or. bg

Justification

The suspect's meeting with the lawyer would be rendered meaningless were it to be held in the presence of the investigating authority or other parties. It must take place in a special (meeting) room in order to ensure its confidentiality.

Amendment 108
Axel Voss

Proposal for a directive
Article 4 – paragraph 1

Text proposed by the Commission

Amendment

1. The suspect or accused person shall have the right to meet with the lawyer representing him.

1. The suspect or accused person shall have the right **at any stage of the proceedings** to meet with the lawyer representing him.

Or. de

Amendment 109

Carmen Romero López, Anna Hedh

Proposal for a directive

Article 4 – paragraph 1

Text proposed by the Commission

1. The suspect or accused person shall have the right to meet with the lawyer representing him.

Amendment

1. The suspect or accused person shall have the right to ***be represented and*** meet with the lawyer ***of his her own choosing or with the one issued from the legal aid system according to national legislation and*** representing him.

Or. en

Amendment 110

Stanimir Ilchev

Proposal for a directive

Article 4 – paragraph 2

Text proposed by the Commission

2. The lawyer shall have the right to be present at any questioning and hearing. ***He*** shall have the right to ask questions, request clarification and make statements, which shall be recorded in accordance with national law.

Amendment

2. The lawyer shall have the right to be present at any interview and hearing, ***whether the person is detained or not. Independently of the rights of the suspect or accused person, the lawyer*** shall have the right to ask questions, request clarification and make statements, which shall be recorded in accordance with national law. ***The lawyer shall also have the right to present evidence in connection with the subject of the charges and to request the investigating authority or the court to gather any evidence relevant to the subject of the charges.***

Or. bg

Justification

The defence lawyer is an autonomous figure in the criminal proceedings and has separate rights. Those rights are established in the interests of the accused; without them the lawyer would not be able to effectively defend the accused.

Amendment 111

Jan Mulder, Wim van de Camp

Proposal for a directive

Article 4 – paragraph 2

Text proposed by the Commission

2. *The lawyer shall have the right to be present at any questioning and hearing. He shall have the right to ask questions, request clarification and make statements, which shall be recorded in accordance with national law.*

Amendment

2. *Member States shall ensure that in cases where detention on remand is possible according to national law the suspect or accused person has the right for his lawyer to be present when he is officially interviewed. Member States shall ensure that this right is applicable to all cases where the suspected or accused person who is summoned to appear before a court having jurisdiction in criminal matters has to appear before that court. The lawyer shall have the right to ask questions, request clarification and make statements, which shall be recorded in accordance with national law.*

Or. en

Amendment 112

Hubert Pirker

Proposal for a directive

Article 4 – paragraph 2

Text proposed by the Commission

2. The lawyer shall have the right to be present at any questioning and hearing. He shall have the right to ask questions, request clarification and make statements,

Amendment

2. The lawyer shall have the right to be present at any questioning and hearing. He shall have the right, *once the law-enforcement or judicial authorities have*

which shall be recorded in accordance with national law.

completed the questioning, to ask *additional* questions, request clarification and make statements, which shall be recorded in accordance with national law.

Or. de

Amendment 113
Rolandas Paksas

Proposal for a directive
Article 4 – paragraph 2

Text proposed by the Commission

2. The lawyer shall have the right to be present at any questioning and hearing. He shall have the right to ask questions, request clarification and make statements, which shall be recorded in accordance with national law.

Amendment

2. The lawyer shall have the right to be present at any questioning and hearing. He shall have the right to ask questions, request clarification and make statements, which shall be recorded in accordance with national law, *and to have his comments annexed to the official record of the questioning or hearing.*

Or. It

Amendment 114
Louis Michel

Proposal for a directive
Article 4 – paragraph 2

Text proposed by the Commission

2. *The lawyer shall have the right to be present at any questioning and hearing. He shall have the right to ask questions, request clarification and make statements, which shall be recorded in accordance with national law.*

Amendment

2. *Member States shall ensure that the suspect or accused person has the right, in accordance with procedures in national law, for his lawyer to be present and participate when he is officially interviewed. When a lawyer participates during an official interview this shall be recorded in accordance with national law.*

Or. en

Amendment 115
Stanimir Ilchev

Proposal for a directive
Article 4 – paragraph 3

Text proposed by the Commission

3. The lawyer shall have the right to be present at any other investigative or evidence-gathering act ***at which the suspect or accused person's presence is required or permitted as a right, in accordance with national law, unless this would prejudice the acquisition of evidence.***

Amendment

3. The lawyer shall have the right to be present at any other investigative or evidence-gathering act, ***save where and only in so far as the authority carrying out that investigative or evidence-gathering act reasonably believes that evidence will be altered, removed or destroyed pending the lawyer's arrival.***

Or. bg

Amendment 116
Jan Mulder, Wim van de Camp

Proposal for a directive
Article 4 – paragraph 3

Text proposed by the Commission

3. ***The lawyer shall have the right to be present at any other*** investigative or evidence-gathering ***act*** at which the suspect or accused person's presence is required or permitted as a right, in accordance with national law, ***unless this would prejudice the acquisition of evidence.***

Amendment

3. ***Member States shall determine in their national law in respect of which*** investigative or ***other*** evidence-gathering ***acts*** at which the suspect or accused person's presence is required or – ***in accordance with national law*** – permitted as a right, ***the suspect or accused person has*** – in accordance with ***procedures in national law*** – the ***right for his lawyer to be present.***

Or. en

Amendment 117
Birgit Sippel, Jan Philipp Albrecht

Proposal for a directive
Article 4 – paragraph 3

Text proposed by the Commission

3. The lawyer shall have the right to be present at any other investigative or evidence-gathering act at which the suspect or accused person's presence is required or permitted as a right, in accordance with national law, unless this would prejudice the acquisition of evidence.

Amendment

3. The lawyer shall have the right ***of access to the materials of the case and to*** be present at any other investigative or evidence-gathering act at which the suspect or accused person's presence is required or permitted as a right, in accordance with national law, unless this would prejudice the acquisition of evidence. ***He shall have the right to request evidence-gathering himself.***

Or. en

Amendment 118
Axel Voss

Proposal for a directive
Article 4 – paragraph 3

Text proposed by the Commission

3. The lawyer shall have the right to be present at any other investigative or evidence-gathering act at which the suspect or accused person's presence is required or permitted as a right, in accordance with national law, unless this would prejudice the acquisition of evidence.

Amendment

3. The lawyer shall have the right to be present at any other investigative or evidence-gathering act at which the suspect or accused person's presence is required or permitted as a right, in accordance with national law, unless this would prejudice the acquisition of evidence ***or delay that acquisition to a disproportionate degree.***

Or. de

Amendment 119
Véronique Mathieu

Proposal for a directive
Article 4 – paragraph 3

Text proposed by the Commission

3. The lawyer shall have the right to be present at any other investigative or evidence-gathering act at which the suspect or accused person's presence is required or permitted as a right, in accordance with national law, unless this would prejudice the acquisition of evidence.

Amendment

3. The lawyer shall have the right to be present at any other investigative or evidence-gathering act at which the suspect or accused person's presence is required or permitted as a right, in accordance with national law, unless this would prejudice the acquisition of evidence ***or the act concerned is a purely technical and scientific investigative or evidence-gathering act.***

Or. fr

Justification

Measures such as fingerprinting and legal medical finding observations are purely technical acts that are necessary to the investigation; the lawyer's role in such circumstances is very limited and the rights of the defence are not in question. The harmonisation of legal aid needs to be anticipated and consideration given to the costs that would arise were a lawyer to be present for all these technical measures.

Amendment 120
Carmen Romero López, Anna Hedh

Proposal for a directive
Article 4 – paragraph 3

Text proposed by the Commission

3. The lawyer shall have the right to be present at any other investigative or evidence-gathering act at which the suspect or accused person's presence is required or permitted as a right, in accordance with national law, ***unless this would prejudice the acquisition of*** evidence.

Amendment

3. The lawyer shall have the right to be present at any other investigative or evidence-gathering act at which the suspect or accused person's presence is required or permitted as a right, in accordance with national law, ***except where the person responsible for the act reasonably believes that the evidence to be gathered will be altered, removed, destroyed as a result of the passage of time needed for the the lawyer to arrive.***

Amendment 121
Sarah Ludford

Proposal for a directive
Article 4 – paragraph 3

Text proposed by the Commission

3. **The lawyer shall have the right to be present at any other** investigative or evidence-gathering **act at which** the suspect or accused **person’s presence is required or permitted as a right**, in accordance with national law, **unless this would prejudice the acquisition of evidence.**

Amendment

3. **Member States shall determine in their national law in respect of which** investigative or **other** evidence-gathering **acts** the suspect or accused **person has the right for his lawyer to attend, provided evidence will not be altered, removed or destroyed pending the lawyer’s arrival. In addition, the suspect or accused person shall have the right for his lawyer to attend at least the following investigative or other evidence-gathering acts, if they exist in the national law concerned:**

(i) identity parades;

(ii) confrontations;

(iii) experimental reconstructions of the scene of crime.

Amendment 122
Louis Michel

Proposal for a directive
Article 4 – paragraph 3

Text proposed by the Commission

3. **The lawyer shall have the right to be present at any other** investigative or evidence-gathering **act** at which the suspect or accused person’s presence is required or permitted as a right, **in accordance with national law, unless this would prejudice**

Amendment

3. **Member States shall determine in their national law in respect of which** investigative or **other** evidence-gathering **acts**, at which the suspect or accused person’s presence is required or permitted as a right, **the suspect or accused person**

the *acquisition of evidence*.

has the right for his lawyer to be present.

Or. en

Amendment 123

Arkadiusz Tomasz Bratkowski

Proposal for a directive

Article 4 – paragraph 3

Text proposed by the Commission

3. *The lawyer shall have the right to be present at any other investigative or evidence-gathering act at which the suspect or accused person's presence is required or permitted as a right, in accordance with national law, unless this would prejudice the acquisition of evidence.*

Amendment

3. *Whenever a lawyer has already been appointed, he may ask to be notified of any investigative or evidence gathering act at which the suspect or accused person's presence is required or permitted as a right in accordance with national law. The suspect or accused person shall have the right for his lawyer to be present at any such investigative or evidence gathering act, unless this would prejudice the acquisition of evidence.*

Whenever the lawyer has been notified, this shall be recorded using the recording procedure of the law of the Member State concerned.

If once notified he does not attend, this should not prevent the carrying out of the investigative measure.

The lawyer's presence shall be recorded in accordance with the recording procedure of the law of the Member State concerned.

Or. en

Justification

In order to ensure the exercise of the suspect or accused person's right to have the lawyer present during an investigative or evidence gathering act and at the same time to avoid any delay of the proceedings, the lawyer should be able to ask for the notification of the carrying out of such acts. The lawyer's absence shall not avert the competent authorities from carrying out such acts if the notification has been correctly done. It seems accurate to provide the notification of a lawyer about the investigative or other evidence gathering acts and combine

this notification and lawyer's absence with the possibility for the competent authority to carry out those acts. There is, however, one point unclear, namely making dependent the notification of a lawyer on the prejudice of the acquisition of evidence. Reference to the prejudice of the acquisition of evidence seems more connected with the lawyer's presence (obligation to wait for his arrival) than with his notification.

Amendment 124
Stanimir Ilchev

Proposal for a directive
Article 4 – paragraph 4

Text proposed by the Commission

4. **The** lawyer shall have the right to check the conditions in which the suspect or accused person is detained and to this end shall have access to the place where the person is detained.

Amendment

4. ***If he or she receives indications of maltreatment, the*** lawyer shall have the right to examine the ***specific*** conditions in which the suspect or accused person is detained and to that end shall have access to the place where the person is detained.

Or. bg

Amendment 125
Axel Voss

Proposal for a directive
Article 4 – paragraph 4

Text proposed by the Commission

4. The lawyer shall have ***the right to check the conditions in which the suspect or accused person is detained and to this end shall have*** access to the place where the person is detained.

Amendment

4. The lawyer shall have access the place where the ***suspect or accused*** person is detained ***and shall have the right to submit to the competent judicial authority an application for authorisation to check the conditions of detention.***

Or. de

Justification

Checking the conditions of detention improves the protection of the fundamental rights of suspects and accused persons in criminal proceedings. The lawyer should not, however, have

the right to check those conditions, but only the right to submit an application for authorisation to do so.

Amendment 126

Birgit Sippel, Jan Philipp Albrecht, Carmen Romero López, Anna Hedh

Proposal for a directive

Article 4 – paragraph 4

Text proposed by the Commission

4. The lawyer shall ***have the right to check*** the conditions in which the suspect or accused person is detained and to ***this*** end shall have access to the place where the person is detained.

Amendment

4. ***To the extent necessary to ensure a fair trial and prevent torture or inhuman or degrading treatment,*** the lawyer shall ***be allowed to examine*** the ***specific*** conditions in which the suspect or accused person is detained and to ***that*** end shall have access to the place where the person is detained.

Or. en

Amendment 127

Rolandas Paksas

Proposal for a directive

Article 4 – paragraph 4

Text proposed by the Commission

4. The lawyer shall have the right to check the conditions in which the suspect or accused person is detained and to this end shall have access to the place where the person is detained.

Amendment

4. The lawyer shall have the right to check the conditions in which the suspect or accused person is detained and to this end shall have access to the place where the person is detained ***and to have his comments officially recorded.***

Or. It

Amendment 128

Jan Mulder, Wim van de Camp

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

Text proposed by the Commission

Amendment

5a. Notwithstanding provisions of national law concerning the mandatory presence of a lawyer, Member States shall ensure that in all cases where the suspect or accused person is deprived of liberty and, when the interests of justice so require, during the trial stage before a court having jurisdiction in criminal matters, a suspect or accused person who has no lawyer is provided with a lawyer, unless he has waived his right to legal assistance in accordance with Article 9.

Or. en

Amendment 129
Louis Michel

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

Text proposed by the Commission

Amendment

5a. Notwithstanding provisions of national law concerning the mandatory presence of a lawyer, in all cases where the suspect or accused person is deprived of liberty, and in any event during the trial stage before a court having jurisdiction in criminal matters, Member States shall ensure that a suspect or accused person is in a position to exercise his right of access to a lawyer, unless he has waived the right in accordance with Article 9.

In cases in the pre-trial phase when a suspect or accused person is not deprived of liberty, Member States shall ensure that a suspect or accused person is permitted to contact or consult his own lawyer or to

be assisted by him.

Or. en

Amendment 130

Carmen Romero López, Birgit Sippel, Anna Hedh, Jan Philipp Albrecht

Proposal for a directive

Article 5 – paragraph 1

Text proposed by the Commission

1. Member States shall ensure that a person to whom Article 2 refers and who is deprived of his liberty has the right to communicate with at least one person named by him as soon as possible.

Amendment

1. Member States shall ensure that a person to whom Article 2 refers and who is deprived of his liberty has the right to communicate ***immediately*** with at least one person named by him as soon as possible.

Or. en

Amendment 131

Birgit Sippel, Jan Philipp Albrecht, Carmen Romero López, Anna Hedh

Proposal for a directive

Article 5 – paragraph 2

Text proposed by the Commission

2. Where the person is a child, Member States shall ensure that the child's legal representative or another adult, depending on the interest of the child, is informed as soon as possible of the deprivation of liberty and the reasons pertaining thereto, unless it would be contrary to the best interests of the child, in which case another appropriate adult shall be informed.

Amendment

2. Where the person is a child ***or a vulnerable person***, Member States shall ensure that the child's legal representative or another adult, depending on the interest of the child ***or the vulnerable person***, is informed as soon as possible of the deprivation of liberty and the reasons pertaining thereto, unless it would be contrary to the best interests of the child ***or the vulnerable person***, in which case another appropriate adult ***or legal representative*** shall be informed.

Or. en

Amendment 132
Rolandas Paksas

Proposal for a directive
Article 5 – paragraph 2

Text proposed by the Commission

2. Where the person is a **child**, Member States shall ensure that the **child's** legal representative or another adult, depending on the interest of the **child**, is informed as soon as possible of the deprivation of liberty and the reasons pertaining thereto, unless it would be contrary to the best interests of the **child**, in which case another appropriate adult shall be informed.

Amendment

2. Where the person is a **minor**, Member States shall ensure that the **minor's** legal representative or another adult, depending on the interest of the **minor**, is informed as soon as possible of the deprivation of liberty and the reasons pertaining thereto, unless it would be contrary to the best interests of the **minor**, in which case another appropriate adult shall be informed.

Or. It

Amendment 133
Birgit Sippel, Jan Philipp Albrecht

Proposal for a directive
Article 6

Text proposed by the Commission

Member States shall ensure that persons to whom Article 2 refers, who are deprived of their liberty and who are non-nationals have the right to have consular or diplomatic authorities of their State of nationality informed of the detention as soon as possible and to communicate with the consular or diplomatic authorities.

Amendment

Member States shall ensure that persons to whom Article 2 refers, who are deprived of their liberty and who are non-nationals have the right to have consular or diplomatic authorities of their State of nationality informed of the detention as soon as possible and to communicate with **and be visited by** the consular or diplomatic authorities **in private**. **Consular authorities may also arrange access to a lawyer for the suspect or accused person.**

Or. en

Amendment 134

Carmen Romero López, Birgit Sippel, Anna Hedh

Proposal for a directive

Article 6

Text proposed by the Commission

Member States shall ensure that persons to whom Article 2 refers, who are deprived of their liberty and who are non-nationals have the right to have consular or diplomatic authorities of their State of nationality informed of the ***detention as soon as possible*** and to communicate with the consular or diplomatic authorities.

Amendment

Member States shall ensure that persons to whom Article 2 refers, who are deprived of their liberty and who are non-nationals have the right to have consular or diplomatic authorities of their State of nationality informed ***promptly upon their arrest or detention*** of the ***detention/arrest*** and to communicate with the consular or diplomatic authorities. ***Such authorities have the right to visit such persons and to arrange for their legal representation, and to observe court proceedings in relation to the person.***

Or. en

Amendment 135

Stanimir Ilchev

Proposal for a directive

Article 7

Text proposed by the Commission

Member States shall ensure that the confidentiality of meetings between the ***suspect or accused*** person and his lawyer is guaranteed. They shall also ensure the confidentiality of correspondence, telephone conversations and other forms of communication permitted under national law between the suspect or accused person and his lawyer.

Amendment

Member States shall ensure ***in all circumstances*** that the confidentiality of ***all*** meetings between ***a person to whom Article 2 applies*** and his lawyer is guaranteed. They shall also ensure the confidentiality of correspondence, telephone conversations and other forms of communication permitted under national law between the suspect or accused person and his lawyer. ***Member States shall ensure that the information exchanged between the suspect or accused person and their lawyer is not put to any other use and that the content of the discussions***

between them is not listened to or transcribed in any form whatsoever.

Or. bg

Amendment 136

Birgit Sippel, Jan Philipp Albrecht, Carmen Romero López

Proposal for a directive

Article 7

Text proposed by the Commission

Member States shall ensure that the confidentiality of meetings between the suspect or accused person and his lawyer is guaranteed. They shall also ensure the confidentiality of correspondence, telephone conversations and other forms of communication permitted under national law between the suspect or accused person and his lawyer.

Amendment

Member States shall ensure that the confidentiality of meetings between the suspect or accused person and his lawyer is guaranteed. They shall also ensure the confidentiality of correspondence, telephone conversations and other forms of communication permitted under national law between the suspect or accused person and his lawyer. ***Confidentiality shall not be subject to any exception; any infringement thereof shall be sanctioned in accordance with national law.***

Or. en

Amendment 137

Axel Voss, Manfred Weber, Hubert Pirker, Monika Hohlmeier

Proposal for a directive

Article 7

Text proposed by the Commission

Member States shall ensure that the confidentiality of meetings between ***the suspect or accused*** person and his lawyer is guaranteed. They shall also ensure the confidentiality of correspondence, telephone conversations and other forms of communication permitted under national law between the suspect or accused person

Amendment

Member States shall ensure that the confidentiality of meetings between ***a*** person ***to whom Article 2 applies*** and his lawyer is guaranteed. They shall also ensure the confidentiality of correspondence, telephone conversations and other forms of communication permitted under national law between the

and his lawyer.

suspect or accused person and his lawyer.
On the basis of instructions from the competent judicial authority, exceptions to the principle of confidentiality shall be considered only if there are grounds for suspecting that the lawyer could be implicated in the offences committed by the accused person or when this is necessary to avert a present danger to a person's life or freedom.

Or. de

Justification

As a matter of principle, the right of access to a lawyer, the right to communicate upon arrest and the confidentiality of the conversations between a suspect or an accused person and his lawyer should not be restricted. However, there are exceptional cases in which the need to maintain a balance between the rights of the suspect or accused person and effective criminal justice makes restrictions essential, subject to strict criteria.

Amendment 138 Cornelis de Jong

Proposal for a directive Article 7

Text proposed by the Commission

Member States shall ensure that the confidentiality of meetings between the suspect or accused person and his lawyer is guaranteed. They shall also ensure the confidentiality of correspondence, telephone conversations and other forms of communication permitted under national law between the suspect or accused person and his lawyer.

Amendment

Member States shall ensure that the confidentiality of meetings between the suspect or accused person and his lawyer is guaranteed. They shall also ensure the confidentiality of correspondence, telephone conversations and other forms of communication permitted under national law between the suspect or accused person and his lawyer. ***This confidentiality is absolute and non-derogable, given that it is the core of which fair trial rights consists.***

Or. en

Amendment 139
Sarah Ludford

Proposal for a directive
Article 7

Text proposed by the Commission

Member States shall ***ensure that*** the confidentiality of ***meetings*** between ***the*** suspect or accused person and his lawyer ***is guaranteed. They shall also ensure*** the ***confidentiality*** of correspondence, telephone conversations and other forms of communication permitted under national law ***between the suspect or accused person and his lawyer.***

Amendment

Member States shall ***guarantee*** the confidentiality of ***communication*** between ***a*** suspect or accused person and his lawyer ***relating to the defence and the preparation of the case, including meetings,*** correspondence, telephone conversations and ***any*** other forms of communication permitted under national law.

Or. en

Amendment 140
Sarah Ludford

Proposal for a directive
Article 7 – paragraph 1 a (new)

Text proposed by the Commission

Amendment

In exceptional circumstances Member States may derogate from paragraph 1 on a case-by-case basis where this is regulated by national law, and

a) when there is sufficient reason to believe that the privilege between lawyer and client is being abused or

b) where there is reason to believe that the lawyer concerned has colluded in a criminal offence with the suspect or accused person, and the derogation is granted by a judicial authority.

Or. en

Amendment 141

Birgit Sippel, Jan Philipp Albrecht, Carmen Romero López, Anna Hedh

Proposal for a directive

Article 8 – paragraph 1 – point a

Text proposed by the Commission

(a) shall be justified by compelling reasons pertaining to the urgent need to avert serious adverse consequences for the life or physical integrity of a person;

Amendment

(a) shall be justified by compelling reasons ***in the light of the particular circumstances of the case*** pertaining to the urgent need to avert serious adverse consequences for the life or physical integrity of a person;

Or. en

Amendment 142

Louis Michel

Proposal for a directive

Article 8 – paragraph 1 – point a

Text proposed by the Commission

(a) shall be justified by compelling reasons ***pertaining to the urgent need to avert serious adverse consequences for the life or physical integrity of a person;***

Amendment

(a) shall be justified by compelling reasons ***drawn from the particular circumstances of the case;***

Or. en

Amendment 143

Véronique Mathieu

Proposal for a directive

Article 8 – paragraph 1 – point a a (new)

Text proposed by the Commission

Amendment

(aa) shall be justified as part of a procedure linked to an act of terrorism or of organised crime;

Amendment 144
Véronique Mathieu

Proposal for a directive
Article 8 – paragraph 1 – point b

Text proposed by the Commission

Amendment

(b) shall not be based exclusively on the type or seriousness of the alleged offence;

deleted

Amendment 145
Carmen Romero López

Proposal for a directive
Article 8 – paragraph 1 – point c

Text proposed by the Commission

Amendment

(c) shall not go beyond what is necessary;

(c) must not go beyond what is necessary;

Amendment 146
Carmen Romero López

Proposal for a directive
Article 8 – paragraph 1 – point d

Text proposed by the Commission

Amendment

(d) shall be limited in time as much as possible and in any event not extend to the trial stage;

(d) must be strictly limited in time as much and in any event not extend to the trial stage;

Amendment 147
Carmen Romero López

Proposal for a directive
Article 8 – paragraph 1 – point e

Text proposed by the Commission

(e) *shall* not prejudice the fairness of the proceedings.

Amendment

(e) **must** not prejudice the fairness of the proceedings.

Or. en

Amendment 148
Rolandas Paksas

Proposal for a directive
Article 8 – paragraph 1 – point e

Text proposed by the Commission

(e) shall not prejudice the fairness of the proceedings.

Amendment

(e) shall not prejudice ***the smooth running of the investigation or*** the fairness of the proceedings.

Or. It

Amendment 149
Birgit Sippel, Jan Philipp Albrecht, Carmen Romero López

Proposal for a directive
Article 8 – paragraph 2

Text proposed by the Commission

Derogations may only be authorised by a duly reasoned decision taken by **a** judicial authority on a case-by-case basis.

Amendment

Derogations may only be authorised by a duly reasoned decision taken by **an independent** judicial authority on a case-by-case basis. ***The duly reasoned decision shall be recorded in writing.***

Or. en

Amendment 150
Carmen Romero López, Anna Hedh

Proposal for a directive
Article 8 – paragraph 2 a (new)

Text proposed by the Commission

Amendment

The grounds and criteria for derogations listed above must be clearly set out in national law.

Or. en

Amendment 151
Birgit Sippel, Jan Philipp Albrecht, Carmen Romero López, Anna Hedh

Proposal for a directive
Article 9 – paragraph 1 – point b

Text proposed by the Commission

Amendment

(b) he has the necessary capacity to understand these consequences and

(b) he has the necessary capacity to understand these consequences and ***has reached the age of majority***

Or. en

Amendment 152
Carmen Romero López, Birgit Sippel

Proposal for a directive
Article 9 – paragraph 1 – point c

Text proposed by the Commission

Amendment

(c) the waiver is given voluntarily and unequivocally.

(c) the waiver is given voluntarily and unequivocally ***in writing***.

Or. en

Amendment 153
Stanimir Ilchev

Proposal for a directive
Article 9 – paragraph 2

Text proposed by the Commission

2. The waiver and the circumstances in which it was given shall be recorded in accordance with the law of the Member State concerned.

Amendment

2. The waiver and the circumstances in which it was given shall be recorded in accordance with the law of the Member State concerned.

Member States shall ensure that no waiver is given to the right to a lawyer where the suspect or accused person is a minor.

Or. bg

Justification

Compulsory defence by a lawyer is important in the case of minors, in order to ensure that their rights are upheld. Such defence cannot, therefore, be made subject to national law.

Amendment 154
Birgit Sippel, Jan Philipp Albrecht

Proposal for a directive
Article 9 – paragraph 2

Text proposed by the Commission

2. The waiver and the circumstances in which it was given shall be recorded in accordance with the law of the Member State concerned.

Amendment

2. The waiver and the circumstances in which it was given shall be ***filed in writing and be*** recorded in accordance with the law of the Member State concerned.

Or. en

Amendment 155
Cornelis de Jong

Proposal for a directive
Article 9 – paragraph 3

Text proposed by the Commission

Amendment

3. Member States shall ensure that a waiver can be subsequently revoked at any stage of the proceedings.

3. Member States shall ensure that a waiver can be subsequently revoked at any stage of the proceedings ***and that the suspect or accused person is informed of this possibility.***

Or. en

Amendment 156

Arkadiusz Tomasz Bratkowski

Proposal for a directive

Article 9 – paragraph 3 a (new)

Text proposed by the Commission

Amendment

3a. The revocation of the right should not lead to the obligation to repeat the criminal proceedings or any part thereof. In case of revocation the directive should be applied from that moment in time onwards.

Or. en

Justification

If the person waived his right the waiver should be applicable till the person changes his mind. Asking him at the very beginning of the trial phase is not necessary and does not seem to serve any purpose. The person should have the right to change his mind at any time, not only just before the trial starts. The directive should not provide any moment in time which would limit the suspect or accused person's right in that regard. At the same time it is important to balance the rights of the suspect and accused persons and the effectiveness of the criminal proceedings. Thus, the revocation of the right should not lead to the obligation to repeat the criminal proceedings or any part thereof, if conducted without the access to a lawyer as a result of a waiver. Otherwise the right could be used to obstruct the criminal proceedings by repeatedly waiving and claiming the right of access and forcing authorities to repeat procedural acts, that have been lawfully carried out already. In case of revocation the directive should be applied from that moment in time onwards.

Amendment 157
Manfred Weber

Proposal for a directive
Article 10 – paragraph 1

Text proposed by the Commission

1. Member States shall ensure that any person other than a suspect or accused person who is heard by the police or other enforcement authority in the context of a criminal procedure is granted **access to a lawyer** if, in the course of questioning, interrogation or hearing, he becomes suspected or accused of having committed a criminal offence.

Amendment

1. Member States shall ensure that any person other than a suspect or accused person who is heard by the police or other enforcement authority in the context of a criminal procedure is granted **the rights granted to suspects and accused persons under this Directive** if, in the course of questioning, interrogation or hearing, he becomes suspected or accused of having committed a criminal offence.

Or. de

Justification

The intention is that accused persons should have only the right of access to a lawyer, not that they should be required to seek legal assistance.

Amendment 158
Birgit Sippel, Jan Philipp Albrecht, Carmen Romero López

Proposal for a directive
Article 10 – paragraph 1

Text proposed by the Commission

1. Member States shall ensure that any person other than a suspect or accused person who is heard by the police or other enforcement authority in the context of a criminal procedure is granted access to a lawyer if, in the course of questioning, interrogation or hearing, he becomes suspected or accused of having committed a criminal offence.

Amendment

1. Member States shall ensure that any person other than a suspect or accused person who is heard by the police or other enforcement authority in the context of a criminal procedure is granted access to a lawyer if, in the course of questioning, interrogation or hearing, he becomes suspected or accused of having committed a criminal offence. ***This person has to be informed promptly that he or she is a suspect and/or accused person. Any such questioning, interrogation or hearing***

shall be suspended immediately.

Or. en

Amendment 159

Sarah Ludford

Proposal for a directive

Article 10 – paragraph 1

Text proposed by the Commission

1. Member States shall ensure that any person other than a suspect or accused person who is heard by the police or other enforcement authority in the context of a criminal procedure is granted access to a lawyer if, in the course of questioning, interrogation or hearing, he becomes suspected or accused of having committed a criminal offence.

Amendment

1. Member States shall ensure that any person other than a suspect or accused person who is heard by the police or other enforcement authority in the context of a criminal procedure is granted access to a lawyer if, in the course of questioning, interrogation or hearing, he becomes suspected or accused of having committed a criminal offence.

Where a lawyer is requested by the suspect or accused person, the proceedings shall be postponed until the person has had the opportunity to have access to a lawyer.

Or. en

Amendment 160

Birgit Sippel, Jan Philipp Albrecht, Carmen Romero López, Anna Hedh

Proposal for a directive

Article 10 – paragraph 1 a (new)

Text proposed by the Commission

Amendment

1a. Access to a lawyer shall be granted in such a time and manner as to allow the suspect or accused person to exercise his rights of defence effectively.

Or. en

Amendment 161

Axel Voss, Hubert Pirker, Monika Hohlmeier

Proposal for a directive

Article 10 – paragraph 2

Text proposed by the Commission

Amendment

2. Member States shall ensure that any statement made by such person before he is made aware that he is a suspect or an accused person may not be used against him.

deleted

Or. de

Justification

Bans on using evidence go to the heart of the Member States' legal systems. Existing legal traditions differ so widely that there is little point in harmonising arrangements in this specific area by means of individual, strict rules. Bans on using evidence should therefore remain an exclusively national matter.

Amendment 162

Rolandas Paksas

Proposal for a directive

Article 11 – paragraph 2 – subparagraph 1 – indent 3

Text proposed by the Commission

Amendment

– the right that his lawyer is present at any questioning and hearing, including the right to ask questions, request clarification and make statements, which shall be recorded in accordance with national law;

– the right that his lawyer is present at any questioning and hearing, including the right to ask questions, request clarification and make statements, which shall be recorded in accordance with national law, **and to have his comments annexed to the official record of the questioning or hearing;**

Or. It

Amendment 163

Birgit Sippel, Jan Philipp Albrecht, Carmen Romero López

Proposal for a directive

Article 11 – paragraph 2 – subparagraph 1 – indent 3 a (new)

Text proposed by the Commission

Amendment

- the right that he and his lawyer have access to the materials of the case;

Or. en

Amendment 164

Axel Voss

Proposal for a directive

Article 11 – paragraph 2 – subparagraph 1 – indent 4

Text proposed by the Commission

Amendment

– the right that his lawyer has access to the place where the person is detained ***in order*** to check the conditions of detention.

– the right that his lawyer has access to the place where the person is detained ***and his lawyer’s right to make an application to the competent judicial authority for authorisation to*** check the conditions of detention.

Or. de

Amendment 165

Birgit Sippel, Jan Philipp Albrecht, Carmen Romero López

Proposal for a directive

Article 11 – paragraph 4

Text proposed by the Commission

Amendment

4. The lawyer of this person in the issuing Member State shall have the right to carry out activities ***limited to what is needed*** to assist the lawyer in the executing Member State, with a view to the effective exercise of the person’s rights in the executing

4. The lawyer of this person in the issuing Member State shall have the right to carry out activities to assist the lawyer in the executing Member State, with a view to the effective exercise of the person’s rights in the executing Member State under that

Member State under that Council Framework Decision, in particular under its Articles 3 and 4.

Council Framework Decision, in particular under its Articles 3 and 4.

Or. en

Amendment 166
Cornelis de Jong

Proposal for a directive
Article 12

Text proposed by the Commission

Amendment

Legal aid

deleted

1. This Directive is without prejudice to domestic provisions on legal aid, which shall apply in accordance with the Charter of Fundamental Rights of the European Union and the European Convention on Human Rights.

2. Member States shall not apply less favourable provisions on legal aid than those currently in place in respect of access to a lawyer provided pursuant to this Directive.

Or. en

Amendment 167
Birgit Sippel, Jan Philipp Albrecht, Anna Hedh

Proposal for a directive
Article 12 – paragraph 2

Text proposed by the Commission

Amendment

2. Member States shall **not apply less favourable provisions on legal aid than those currently in place in respect of** access to a lawyer provided pursuant to this Directive.

2. Member States shall **ensure that suspects and accused persons have access to legal aid where necessary, to pay for the** access to a lawyer provided pursuant to this Directive.

Amendment 168
Carmen Romero López, Anna Hedh

Proposal for a directive
Article 12 – paragraph 2

Text proposed by the Commission

2. Member States shall ***not apply less favourable provisions on legal aid than those currently in place in respect of access to a lawyer provided pursuant to this Directive.***

Amendment

2. Member States shall ***ensure that suspects and accused persons are granted with effective legal aid according to national legislation.***

Amendment 169
Birgit Sippel, Jan Philipp Albrecht, Carmen Romero López

Proposal for a directive
Article 12 a (new)

Text proposed by the Commission

Amendment

Article 12 a

Definition of a lawyer

1. Member States shall take concrete measures to ensure that the lawyer has appropriate accreditation to effectively represent the suspect or accused person in accordance with this Directive.

2. In order to ensure that only accredited lawyers provide legal assistance, Member States shall endeavour to establish a register or registers of accredited lawyers who are appropriately qualified. Once established, such register or registers shall, where appropriate, be made available to relevant authorities.

Amendment 170

Carmen Romero López

Proposal for a directive

Article 13 – paragraph 1

Text proposed by the Commission

1. Member States shall ensure that a person to whom Article 2 refers has an effective remedy in instances where his right of access to a lawyer has been breached.

Amendment

1. Member States shall ensure that a person to whom Article 2 **and article 10** refers has an effective remedy in instances where his right of access to a lawyer has been breached.

Or. en

Amendment 171

Axel Voss, Monika Hohlmeier

Proposal for a directive

Article 13 – paragraph 2

Text proposed by the Commission

2. The remedy shall have the effect of placing the suspect or accused person in the same position in which he would have found himself had the breach not occurred.

Amendment

deleted

Or. de

Justification

The effect of legal remedy should remain exclusively a national criminal law matter.

Amendment 172

Sarah Ludford

Proposal for a directive

Article 13 – paragraph 2

Text proposed by the Commission

Amendment

2. The remedy shall have the effect of placing the suspect or accused person in the same position in which he would have found himself had the breach not occurred. *deleted*

Or. en

Amendment 173

Axel Voss, Manfred Weber, Monika Hohlmeier

**Proposal for a directive
Article 13 – paragraph 3**

Text proposed by the Commission

Amendment

3. Member States shall ensure that statements made by the suspect or accused person or evidence obtained in breach of his right to a lawyer or in cases where a derogation to this right was authorised in accordance with Article 8, may not be used at any stage of the procedure as evidence against him, unless the use of such evidence would not prejudice the rights of the defence. *deleted*

Or. de

Justification

Bans on using evidence go to the heart of the Member States' legal systems and should therefore remain an exclusively national matter.

Amendment 174

Sarah Ludford

**Proposal for a directive
Article 13 – paragraph 3**

Text proposed by the Commission

3. Member States shall ensure that statements made by the suspect or accused person or evidence obtained in breach of his right to a lawyer or in cases where a derogation to this right was authorised in accordance with *Article 8, may not be used at any stage of the procedure as evidence against him, unless the use of such evidence would not prejudice the rights of the defence.*

Amendment

3. Member States shall ensure that ***the question of the value to be given to*** statements made by the suspect or accused person or evidence obtained in breach of his right to a lawyer or in cases where a derogation to this right was authorised in accordance with ***this Directive, shall be determined by that court being responsible for ensuring the overall fairness of the proceedings, in accordance with national legal procedures.***

Or. en

Amendment 175

Hubert Pirker, Anna Maria Corazza Bildt

Proposal for a directive

Article 13 – paragraph 3

Text proposed by the Commission

3. Member States shall ensure that statements made by the suspect or accused person or evidence obtained in breach of his right to a lawyer or in cases where a derogation to this right was authorised in accordance with *Article 8, may not be used at any stage of the procedure as evidence against him, unless the use of such evidence would not prejudice the rights of the defence.*

Amendment

3. Member States shall ensure that ***the question of which value to be given to*** statements made by the suspect or accused person or evidence obtained in breach of his right to a lawyer or in cases where a derogation to this right was authorised in accordance with ***this Directive, shall be determined by that court being responsible for ensuring the overall fairness of the proceedings, in accordance with national legal procedures.***

Or. en

Amendment 176

Carmen Romero López

Proposal for a directive

Article 13 – paragraph 3

Text proposed by the Commission

3. Member States shall ensure that statements made by the suspect or accused person or evidence obtained in breach of his right to a lawyer or in cases where a derogation to this right was authorised in accordance with Article 8, may not be used at any stage of the procedure as evidence against him, unless the use of such evidence would not prejudice the rights of the defence.

Amendment

3. Member States shall ensure that statements made by the suspect or accused person or evidence obtained in breach of his right to a lawyer or in cases where a derogation to this right was authorised in accordance with Article 8, may not be used **for his/her conviction** at any stage of the procedure as evidence against him, unless the use of such evidence would not prejudice the rights of the defence.

Or. en

Amendment 177

Arkadiusz Tomasz Bratkowski

Proposal for a directive

Article 13 – paragraph 3

Text proposed by the Commission

3. Member States **shall** ensure that **statements made by** the suspect or accused person **or evidence obtained** in breach of his right to a lawyer or in cases where a derogation **to** this right was authorised in accordance with **Article 8, may not be used at any stage of the procedure as evidence against him, unless the use of such evidence would not prejudice the rights of the defence.**

Amendment

3. **Once a case has been referred to a court having jurisdiction in criminal matters,** Member States **should** ensure that the **question of which value to be given to statements obtained from a** suspect or accused person in breach of his right **of access** to a lawyer, or in cases where a **temporary postponement or** derogation **of** this right was authorised in accordance with **this Directive, should be determined by that court being responsible for ensuring the overall fairness of the proceedings, in accordance with national legal procedures.**

Or. en

Justification

Judicial discretion in examining the evidence of the proceedings is one of the fundamental principles of criminal proceedings granting the independence of judges in the traditional model of division of powers. When examining the evidence the court should always take into

consideration the question of fairness of the proceedings, including the guarantee for the exercise of the rights of defence. There should be then much more confidence in the court assessment and thus, the examination of the evidence and the decision whether and to what extent the evidence could be taken into account should be upon the court. Automatic exclusion of the evidence may result in a situation, where evidence obtained in case of a lawful derogation could not be used in court. It is clear from the ECHR case-law, that when assessing the fairness of the proceedings it is necessary to keep a general overview of the procedure. Therefore an automatic exclusion of evidence could disrupt the overall balance.