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*Plenary sitting*

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**A8-0165/2015**

18.5.2015

**\*\*\*I**  
**REPORT**

on the proposal for a directive of the European Parliament and of the Council  
on provisional legal aid for suspects or accused persons deprived of liberty and  
legal aid in European arrest warrant proceedings  
(COM(2013)0824 – C7-0429/2013 – 2013/0409(COD))

Committee on Civil Liberties, Justice and Home Affairs

Rapporteur: Dennis de Jong

### ***Symbols for procedures***

- \* Consultation procedure
- \*\*\* Consent procedure
- \*\*\*I Ordinary legislative procedure (first reading)
- \*\*\*II Ordinary legislative procedure (second reading)
- \*\*\*III Ordinary legislative procedure (third reading)

(The type of procedure depends on the legal basis proposed by the draft act.)

### ***Amendments to a draft act***

#### **Amendments by Parliament set out in two columns**

Deletions are indicated in ***bold italics*** in the left-hand column. Replacements are indicated in ***bold italics*** in both columns. New text is indicated in ***bold italics*** in the right-hand column.

The first and second lines of the header of each amendment identify the relevant part of the draft act under consideration. If an amendment pertains to an existing act that the draft act is seeking to amend, the amendment heading includes a third line identifying the existing act and a fourth line identifying the provision in that act that Parliament wishes to amend.

#### **Amendments by Parliament in the form of a consolidated text**

New text is highlighted in ***bold italics***. Deletions are indicated using either the ▬ symbol or strikeout. Replacements are indicated by highlighting the new text in ***bold italics*** and by deleting or striking out the text that has been replaced.

By way of exception, purely technical changes made by the drafting departments in preparing the final text are not highlighted.

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## DRAFT EUROPEAN PARLIAMENT LEGISLATIVE RESOLUTION

**on the proposal for a directive of the European Parliament and of the Council on provisional legal aid for suspects or accused persons deprived of liberty and legal aid in European arrest warrant proceedings  
(COM(2013)0824 – C7-0429/2013 – 2013/0409(COD))**

**(Ordinary legislative procedure: first reading)**

*The European Parliament,*

- having regard to the Commission proposal to Parliament and the Council (COM(2013)0824),
  - having regard to Article 294(2) and Article 82(2)(b), of the Treaty on the Functioning of the European Union, pursuant to which the Commission submitted the proposal to Parliament (C7-0429/2013),
  - having regard to Article 294(3) of the Treaty on the Functioning of the European Union,
  - having regard to Rule 59 of its Rules of Procedure,
  - having regard to the report of the Committee on Civil Liberties, Justice and Home Affairs (A8-0165/2015),
1. Adopts its position at first reading hereinafter set out;
  2. Calls on the Commission to refer the matter to Parliament again if it intends to amend its proposal substantially or replace it with another text;
  3. Instructs its President to forward its position to the Council, the Commission and the national parliaments.

### **Amendment 1**

#### **Proposal for a directive Title**

*Text proposed by the Commission*

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

*Amendment*

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

warrant proceedings

## **Amendment 2**

**Proposal for a directive**

**Recital -1 (new)**

*Text proposed by the Commission*

*Amendment*

*(-1) Article 6(3)(c) of the European Convention for the Protection of Human Rights and Fundamental Freedoms (ECHR) and Article 14(3)(d) of the International Covenant on Civil and Political Rights, recognise the right to legal aid for those who do not have sufficient means themselves to pay for legal assistance, where the interests of justice so require.*

## **Amendment 3**

**Proposal for a directive**

**Recital -1 a (new)**

*Text proposed by the Commission*

*Amendment*

*(-1a) The third paragraph of Article 47 of the Charter of Fundamental Rights of the European Union ('the Charter') provides that legal aid is to be made available to those who lack sufficient resources in so far as such aid is necessary to ensure effective access to justice.*

## **Amendment 4**

**Proposal for a directive**

**Recital -1 b (new)**

*Text proposed by the Commission*

*Amendment*

***(-1b) The United Nations Principles and Guidelines on Access to Legal Aid in Criminal Justice Systems<sup>1a</sup> provide for a comprehensive framework on the right to legal aid.***

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***<sup>1a.</sup> Adopted by the General Assembly of the United Nations through its Resolution A/Res/67/187 of 20 December 2012.***

## **Amendment 5**

### **Proposal for a directive**

#### **Recital 1**

*Text proposed by the Commission*

*Amendment*

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

(1) The purpose of this Directive is to ensure the effectiveness of the right of access to a lawyer ***as provided under Directive 2013/48/EU of the European Parliament and of the Council<sup>0a</sup> by making available assistance by a lawyer funded*** by the Member States for ***suspects or accused persons*** and for requested persons in surrender proceedings pursuant to Council Framework Decision 2002/584/JHA<sup>1</sup> (European arrest warrant proceedings). ***The scope of this Directive is determined, in particular, by the relevant provisions of Directive 2013/48/EU.***

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***<sup>0a.</sup> Directive 2013/48/EU of the European Parliament and of the Council of 22 October 2013 on the right of access to a lawyer in criminal proceedings and in European arrest warrant proceedings, and on the right to have a third party informed upon deprivation of liberty and to communicate with third persons and***

<sup>1</sup>. Council Framework Decision 2002/584/JHA of 13 June 2002 on the European arrest warrant and the surrender procedures between Member States (OJ L 190, 18.7.2002, p. 1).

*with consular authorities while deprived of liberty (OJ L 294, 6.11.2013, p. 1).*

<sup>1</sup>. Council Framework Decision 2002/584/JHA of 13 June 2002 on the European arrest warrant and the surrender procedures between Member States (OJ L 190, 18.7.2002, p. 1).

## **Amendment 6**

### **Proposal for a directive Recital 2 a (new)**

*Text proposed by the Commission*

*Amendment*

*(2a) In accordance with Article 82(2) of the Treaty on the Functioning of the European Union (TFEU), to the extent to that it is necessary to facilitate the mutual recognition of judgments and judicial decisions and police and judicial cooperation in criminal matters having a cross-border dimension, the European Parliament and the Council may, by means of directives adopted in accordance with the ordinary legislative procedure, establish minimum rules. Such rules are to take into account the differences between the legal traditions and systems of the Member States. They are to cover, in particular, the rights of individuals in criminal procedure.*

#### *Justification*

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

## Amendment 7

### Proposal for a directive Recital 3

#### *Text proposed by the Commission*

(3) The Stockholm Programme<sup>2</sup> put a strong focus on the strengthening of the rights of individuals in criminal proceedings. In its point 2.4, the European Council invited the Commission to put forward proposals, setting out a step by step approach<sup>3</sup> to strengthening the rights of suspects or accused persons.

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<sup>2</sup> OJ C 115, 4.5.2010, p. 1

<sup>3</sup> OJ C 291, 4.12.2009, p. 1

#### *Amendment*

(3) The Stockholm Programme<sup>2</sup> put a strong focus on the strengthening of the rights of individuals in criminal proceedings. In its point 2.4, the European Council invited the Commission to put forward proposals, setting out a step by step approach<sup>3</sup> to strengthening the rights of suspects or accused persons, ***in particular the right to legal advice and legal aid (measure C).***

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<sup>2</sup> OJ C 115, 4.5.2010, p. 1

<sup>3</sup> OJ C 291, 4.12.2009, p. 1

## Amendment 8

### Proposal for a directive Recital 3 a (new)

#### *Text proposed by the Commission*

#### *Amendment*

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

#### *Justification*

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

## Amendment 9

### Proposal for a directive Recital 4

#### *Text proposed by the Commission*

(4) Three measures on procedural rights in criminal proceedings have been adopted to date, namely Directive 2010/64/EU of the European Parliament and of the Council<sup>4</sup>, Directive 2012/13/EU of the European Parliament and of the Council<sup>5</sup> and Directive 2013/48/EU *of the European Parliament and the Council*<sup>6</sup>.

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<sup>4</sup> Directive 2010/64/EU of the European Parliament and of the Council of 20 October 2010 on the right to interpretation and translation in criminal proceedings (OJ L 280, 26.10.2010, p. 1).

<sup>5</sup> Directive 2012/13/EU of the European Parliament and of the Council of 22 May 2012 on the right to information in criminal proceedings (OJ L 142, 1.6.2012, p. 1.)

<sup>6</sup> *Directive 2013/48/EU of the European Parliament and of the Council of 22 October 2013 on the right of access to a lawyer in criminal proceedings and in European arrest warrant proceedings, and on the right to have a third party informed upon deprivation of liberty and to communicate with third persons and with consular authorities while deprived of liberty (OJ L 294, 6.11.2013, p. 1).*

#### *Amendment*

(4) Three measures on procedural rights in criminal proceedings have been adopted to date, namely Directive 2010/64/EU of the European Parliament and of the Council<sup>4</sup> *on the right to interpretation and translation*, Directive 2012/13/EU of the European Parliament and of the Council<sup>5</sup> *on the right to information* and Directive 2013/48/EU *on the right to access to a lawyer and on the right to have a third party informed upon deprivation of liberty and to communicate with third persons and with consular authorities while deprived of liberty*.

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<sup>4</sup> Directive 2010/64/EU of the European Parliament and of the Council of 20 October 2010 on the right to interpretation and translation in criminal proceedings (OJ L 280, 26.10.2010, p. 1).

<sup>5</sup> Directive 2012/13/EU of the European Parliament and of the Council of 22 May 2012 on the right to information in criminal proceedings (OJ L 142, 1.6.2012, p. 1.)

## Amendment 10

### Proposal for a directive Recital 6

*Text proposed by the Commission*

*Amendment*

*(6) The scope and content of the right to access to a lawyer are set out in Directive 2013/48/EU. A suspect or accused person in criminal proceedings should have the right of access to a lawyer from the time when they are made aware, by official notification or otherwise, by the competent authorities, that they are suspected or accused of having committed a criminal offence, and irrespective of whether they are deprived of liberty. That right applies until the conclusion of the proceedings, which is understood to mean the final determination of the question whether the suspect or accused person has committed the offense, including where applicable, sentencing and the resolution of any appeal.*

*deleted*

#### *Justification*

*Recital 1 (amendment 5) already refers to the scope of the Directive on the right to access to a lawyer. By making the scope of the two Directives identical, there is no need for further detailed specification.*

## Amendment 11

### Proposal for a directive Recital 6 a (new)

*Text proposed by the Commission*

*Amendment*

*(6a) In accordance with Directive 2013/48/EU, legal aid is provided in the Member States in accordance with the Charter and the ECHR. Where suspects or accused persons are deprived of liberty, Member States should make the necessary*

*arrangements to ensure that such persons are in a position to exercise their right of access to a lawyer effectively, including by arranging for the assistance of a lawyer where the persons concerned do not have one, unless they have waived that right. Under this directive, such arrangements could include those on legal aid if applicable.*

*Justification*

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

**Amendment 12**

**Proposal for a directive  
Recital 7**

*Text proposed by the Commission*

*Amendment*

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

*deleted*

*Justification*

*The new Recital -1a already refers to the European Convention for the Protection of Human Rights and Fundamental Freedoms. The (rather general) reference to the European Court of Human Rights' jurisprudence does not have any real added value.*

## Amendment 13

### Proposal for a directive Recital 8

*Text proposed by the Commission*

*Amendment*

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

*deleted*

*Justification*

*Recital 1 (amendment 5) already refers to Article 3 of Directive 2013/48/EU. There is no need to recall only one particular sub-paragraph of this Article, whereas it seems cumbersome to include the entire text of this Article.*

## Amendment 14

### Proposal for a directive Recital 9

*Text proposed by the Commission*

*Amendment*

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

(9) In order for suspects or accused persons to be in a position to exercise effectively the right of access to a lawyer at the early stages of the proceedings, they should not have to wait for access to a lawyer pending the processing of the application for legal aid and the assessment of the eligibility criteria for legal aid. Member States should therefore ensure that effective provisional legal aid is available without undue delay before ***the performance of any procedural step which, under national or Union law, has to be carried out in the presence of a lawyer***, and it should be available at least until the competent authority has taken the decision on legal aid and, in cases of full or

become final, or, where the application for legal aid is granted, the appointment of the lawyer by the competent authority has taken effect.

partial rejection, this decision has become final, or, where the application for legal aid is granted, the appointment of the lawyer by the competent authority has taken effect.

## **Amendment 15**

### **Proposal for a directive Recital 9 a (new)**

*Text proposed by the Commission*

*Amendment*

***(9a) This Directive should allow for differences in the Member States' legal aid systems. Each Member State should be responsible for the granting of legal aid. Legal aid should be granted subject to an assessment of the financial means of the applicant ('means test') and/or of whether it is in the interests of justice to provide legal aid in the case concerned ('merits test').***

*Justification*

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

## **Amendment 16**

### **Proposal for a directive Recital 10**

*Text proposed by the Commission*

*Amendment*

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

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

## *Justification*

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

### **Amendment 17**

#### **Proposal for a directive**

##### **Recital 11**

###### *Text proposed by the Commission*

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

###### *Amendment*

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

### **Amendment 18**

#### **Proposal for a directive**

##### **Recital 12**

###### *Text proposed by the Commission*

(12) Member States should be able to provide that the costs relating to provisional legal aid for suspects or accused persons ***deprived of liberty*** and costs relating to provisional legal aid for requested persons ***can*** be recovered from those persons if, in the subsequent

###### *Amendment*

(12) Member States should be able to provide that the costs relating to provisional legal aid for suspects or accused persons and costs relating to provisional legal aid for requested persons ***may*** be recovered from those persons if, in the subsequent assessment ***and final***

assessment of whether they have a right to legal aid, they are found to not meet the criteria to benefit from legal aid under national law.

***decision by the competent authority*** of whether they have a right to ***ordinary*** legal aid, they are found to not meet the criteria to benefit from ***ordinary*** legal aid under national law, ***and if they intentionally provided the competent authorities with false information on their personal financial situation. In order to ensure that any recovery of costs relating to provisional legal aid does not prejudice the suspect or accused or requested person in such a way as to undermine the overall fairness of the proceedings, Member States should ensure that the conditions attached to recovery of costs are clear and reasonable and take account of the specific financial situation of the suspect, accused or requested person.***

## **Amendment 19**

### **Proposal for a directive Recital 13**

#### *Text proposed by the Commission*

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

#### *Amendment*

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

#### *Justification*

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

## **Amendment 20**

### **Proposal for a directive Recital 13 a (new)**

*Text proposed by the Commission*

*Amendment*

*(13a) In some Member States certain minor offences, in particular minor traffic offences, minor offences in relation to general municipal regulations and minor public order offences, are considered to be criminal offences. In such situations, it would be unreasonable to require that the competent authorities ensure all the rights under this Directive. Where the law of a Member State provides in respect of minor offences that deprivation of liberty cannot be imposed as a sanction, this Directive should therefore apply only to the proceedings before a court having jurisdiction in criminal matters.*

## **Amendment 21**

### **Proposal for a directive Recital 13 b (new)**

*Text proposed by the Commission*

*Amendment*

*(13b) The scope of this Directive in respect of certain minor offences should not affect the obligations of Member States under the ECHR to ensure the right to a fair trial including obtaining legal assistance from a lawyer.*

## **Amendment 22**

### **Proposal for a directive Recital 14**

*Text proposed by the Commission*

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

*Amendment*

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

**Amendment 23**

**Proposal for a directive  
Recital 15**

*Text proposed by the Commission*

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

*Amendment*

(15) This Directive provides for the right to provisional ***and ordinary*** legal aid for ***vulnerable suspects or accused or requested persons. Children are particularly vulnerable so particular attention should be paid to them and special measures should be taken in accordance with Directive ... on procedural safeguards for children suspected or accused in criminal proceedings.***

## Amendment 24

### Proposal for a directive Recital 16

*Text proposed by the Commission*

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

*Amendment*

(16) When implementing this Directive, Member States should ensure the respect of the fundamental right of legal aid as provided for in ***the third paragraph of*** Article 47 of the Charter and ***in*** Article 6(3)(c) of the ECHR and ensure that legal aid is available to ***applicants on the basis of a means test and/or of a merits test. In doing so, they should respect the United Nations Principles and Guidelines on Access to Legal Aid in Criminal Justice Systems. Where the granting of legal aid is subject to a means test, such a test should take into account considerations particular to vulnerable suspects or accused persons.***

## Amendment 25

### Proposal for a directive Recital 16 a (new)

*Text proposed by the Commission*

*Amendment*

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

*appeal a decision refusing legal aid.*

## **Amendment 26**

### **Proposal for a directive**

#### **Recital 17**

##### *Text proposed by the Commission*

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

##### *Amendment*

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

## **Amendment 27**

### **Proposal for a directive**

#### **Recital 18**

##### *Text proposed by the Commission*

(18) This Directive should apply to suspects or accused persons regardless of their legal status, citizenship or nationality. This Directive upholds the fundamental rights and principles recognised by the

##### *Amendment*

(18) This Directive should apply to suspects or accused persons regardless of their legal status, citizenship or nationality, *sex, race, colour, ethnic or social origin, genetic features, language, religion or*

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

*belief, political or any other opinion, membership of a national minority, property, birth, disability, residence status, age, sexual orientation or any other status.* This Directive upholds the fundamental rights and principles recognised by the Charter of Fundamental Rights of the European Union and the European Convention on Human Rights, including the prohibition of torture and inhuman and degrading treatment, the right to liberty and security, respect for private and family life, the right to the integrity of the person, the rights of the child, integration of persons with disabilities, the right to an effective remedy and the right to a fair trial, the presumption of innocence and the rights of the defence. This Directive should be implemented in accordance with those rights and principles.

## Amendment 28

### Proposal for a directive Recital 19

#### *Text proposed by the Commission*

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

#### *Amendment*

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

***protection.***

*Justification*

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

**Amendment 29**

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

*Text proposed by the Commission*

1. This Directive lays down minimum rules concerning

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

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

*Amendment*

1. This Directive lays down minimum rules concerning:

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

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

**Amendment 30**

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

*Text proposed by the Commission*

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

*Amendment*

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

## Amendment 31

### Proposal for a directive Article 2

*Text proposed by the Commission*

Article 2

Scope

This Directive shall apply to:

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

b) requested persons.

*Amendment*

Article 2

Scope

***1.*** This Directive shall apply to:

(a) suspects or accused persons in criminal proceedings who have a right of access to a lawyer pursuant to Directive 2013/48/EU ***or any legally binding Union instrument on procedural safeguards for child suspects;***

(b) requested persons ***as defined in point (c) of Article 3 of this Directive.***

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

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

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

***this Directive shall only apply to the proceedings before a court having jurisdiction in criminal matters.***

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

## Amendment 32

### Proposal for a directive Article 3 – point a

*Text proposed by the Commission*

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

*Amendment*

(a) "**ordinary** legal aid" means funding and assistance from the Member State ensuring the exercise of the right of access to a lawyer;

**Amendment 33**

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

*Text proposed by the Commission*

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

*Amendment*

(b) "provisional legal aid" means legal aid **provided** until the decision on **ordinary** legal aid has been taken **and has come into effect**;

**Amendment 34**

**Proposal for a directive**  
**Article 3 – point d**

*Text proposed by the Commission*

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

*Amendment*

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

**Amendment 35**

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

*Text proposed by the Commission*

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

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

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

*Amendment*

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

(a) suspects or accused persons in criminal proceedings, ***who have the right of access to a lawyer pursuant to Directive 2013/48/EU or any legally binding Union instrument on procedural safeguards for child suspects***;

(b) requested persons, ***who have the right of access to a lawyer pursuant to Directive 2013/48/EU both in the executing and in the issuing Member State, in accordance with Article 10 of that Directive or any legally binding Union instrument on procedural safeguards for child suspects***.

**Amendment 36**

**Proposal for a directive  
Article 4 – paragraph 2**

*Text proposed by the Commission*

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

*Amendment*

2. Provisional legal aid shall be granted without undue delay and in any event before questioning.

**Amendment 37**

**Proposal for a directive  
Article 4 – paragraph 3**

*Text proposed by the Commission*

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

*Amendment*

3. Provisional legal aid shall be ensured until the final decision on legal aid has been taken and ***has come*** into effect, ***and until either of the following***:

*lawyer has taken effect.*

*(a) where legal aid has been granted, the appointment of the lawyer has taken effect; or*

*(b) where legal aid has been refused, the decision has become final and the suspect or accused person or the requested person has had a reasonable opportunity to find a lawyer of his or her choice.*

#### *Justification*

*In addition to the amendments relating to the broadening of the scope of the Directive with a view to including all ordinary legal aid, the amendments proposed to paragraphs 3 seek to clarify the precise nature of the rights. In particular, provisional aid should not be suspended until a final decision has been taken on ordinary legal aid. Moreover, the right to access to a lawyer also applies in the case of a negative decision on legal aid: in that case, there should be sufficient time to find a suitable lawyer.*

### **Amendment 38**

#### **Proposal for a directive**

#### **Article 4 – paragraph 4 a (new)**

*Text proposed by the Commission*

*Amendment*

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

### **Amendment 39**

#### **Proposal for a directive**

#### **Article 4 – paragraph 5**

*Text proposed by the Commission*

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

*Amendment*

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

**Amendment 40**

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

*Text proposed by the Commission*

*Amendment*

***Article 4a***

***1. Member States shall ensure that the persons referred to in Article 4(1) may obtain access to legal aid if they lack sufficient financial means to meet part or all of the costs of their defence and the proceedings (‘means test’) and/or where it is in the interests of justice to provide legal aid (‘merits test’).***

***2. The means test shall be based on all***

*relevant and objective factors, such as income, capital, family situation, standard of living and the cost of a legal aid lawyer.*

*3. The merits test shall include an assessment of the urgency and complexity of the case, the seriousness of the offence and the severity of the potential penalty that may be imposed, as well as the social and personal circumstances of the suspect or accused person or the requested person concerned.*

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

## **Amendment 41**

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

*Text proposed by the Commission*

*Amendment*

#### *Article 4b*

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

## Amendment 42

### Proposal for a directive Article 5

#### *Text proposed by the Commission*

#### Article 5

#### Legal aid for requested persons

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

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

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

#### *Amendment*

#### Article 5

#### Legal aid for requested persons

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

2. The issuing Member State shall ensure that requested persons, that exercise their right to appoint a lawyer in the issuing Member State *and in any other Member State where evidence-gathering or other investigative acts are being carried out by the competent authorities*, according to Article 10 of Directive 2013/48/EU have the right to *provisional and ordinary* legal aid in that Member State for the purpose of the European arrest warrant proceedings in the executing Member State.

*3. The assessment of the application for ordinary legal aid submitted by the requested person shall be based on the eligibility criteria as laid down in Article 4a, namely an assessment of the financial means of the requested person in Member States in which legal aid is subject to a means test and/or of whether it is in the interests of justice to provide legal aid in the case in question in Member States in which legal aid is subject to a merits test.*

## **Amendment 43**

### **Proposal for a directive Article 5 a (new)**

*Text proposed by the Commission*

*Amendment*

#### **Article 5a**

***1. In order to ensure the effectiveness and quality of legal aid, Member States shall take the necessary action to guarantee that the legal aid services provided are of a sufficiently high standard to ensure that the right to a fair trial is safeguarded.***

***2. Member States shall, in particular, ensure that:***

***(a) ordinary legal aid is provided at all stages of the criminal justice process;***

***(b) systems ensuring the quality and independence of legal aid lawyers are put in place or maintained, in particular a system of accreditation for legal aid lawyers as well as education and continuous professional training in order to ensure that these lawyers possess sufficient knowledge, skills and experience to contribute to the effective exercise of the rights of the defence;***

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

***(d) suspect or accused person and requested person have the right to have the legal aid lawyer assigned to them replaced once;***

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

***(f) appropriate training is provided to all staff involved in the decision-making on legal aid in criminal proceedings;***

***(g) any decision rejecting in part or in full an application for legal aid is given to the***

*suspect or accused person and the requested person in writing.*

#### **Amendment 44**

##### **Proposal for a directive Article 5 b (new)**

*Text proposed by the Commission*

*Amendment*

##### **Article 5b**

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

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

#### **Amendment 45**

##### **Proposal for a directive Article 6**

*Text proposed by the Commission*

*Amendment*

Article 6

Article 6

Provision of data

Provision of data

1. Member States shall collect data with

1. Member States shall collect ***relevant***

regard to how the rights in *Article 4 and Article 5* have been implemented.

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

*statistical* data with regard to how the rights in *Articles 4, 4a, 4b, 5 and 5a* have been implemented, *whilst fully ensuring personal data protection for suspects or accused and requested persons*.

2. Member States shall by ...\* and every *three* years thereafter, send the Commission such data.

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\* *OJ: please insert date: two years after publication of this Directive.*

## EXPLANATORY STATEMENT

On 27 November 2013, the European Commission adopted a proposal for a directive of the European Parliament and of the Council on provisional Legal aid for suspects or accused persons deprived of liberty and Legal aid in European arrest warrant proceedings<sup>1</sup>.

### General appraisal of the proposal

According to Article 82 of the Treaty on the Functioning of the European Union (TFEU), judicial co-operation in criminal matters in the Union shall be based on the principle of mutual recognition of judgments and judicial decisions. The implementation of this principle presupposes that Member States put trust in each other's criminal justice systems, including in the manner in which the rights of suspects of accused persons are safeguarded.

In practice, however, national practices vary in this respect. Against this background, on 30 November 2009, the Council adopted the Roadmap for strengthening procedural rights of suspected and accused persons in criminal proceedings<sup>2</sup>. The Roadmap identifies as measure C the right to legal advice and legal aid. The right to legal aid is intrinsically connected to the right to access to a lawyer, on which the European Parliament and the Council adopted Directive 2013/48/EU of 22 October 2013. For those who are lacking the necessary financial means, only legal aid can make the right to access to a lawyer effective.

The right to legal aid is not an easy subject, which may explain why it has taken the Commission a relatively long time, before submitting the current instruments. However, this should not keep the new legislature from dealing with the proposal for a Directive as a matter of priority. The different interpretation of the right to a fair trial, including through legal aid, as recognised, *inter alia*, in Article 47 of the Charter of Fundamental Rights of the European Union and Article 6 of the European Convention for the Protection of Human Rights and Fundamental Freedoms, constitutes an obstacle for fair and effective judicial co-operation in criminal matters. Hence, the remaining measures of the Roadmap and in particular, the draft Directive on Legal Aid, should be adopted as soon as possible.

The proposal of the Commission is a welcome step in ensuring a minimum level of legal aid in all Member States. It is, however, restricted to the right to provisional legal aid for suspects or accused persons in criminal proceedings who are deprived of liberty, and the right to provisional legal aid and to legal aid for requested persons who are subject to European arrest warrant proceedings. Additional aspects of the right to legal aid have been included in a separate Recommendation of the Commission<sup>3</sup>.

The Rapporteur takes the view that the current, fragmented approach followed by the European Commission may reflect the sensitivity of the subject, but it does not increase legal certainty, nor does it make it clear for suspected or accused persons to what extent they will effectively have a right to legal aid and what the quality of the legal assistance will be. Thus, the scope of the directive should include the right to both provisional and ordinary legal aid

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<sup>1</sup> COM(2013)824 final of 27 November 2013.

<sup>2</sup> OJ C 205, 4.12.2009, p. 1.

<sup>3</sup> C(2013)8179/2.

under all circumstances. In this respect, the directive should follow the same scope as Directive 2013/48/EU on the right of access to a lawyer.

The Rapporteur considers that accused, suspected or requested persons may feel inhibited to ask for legal aid, if Member States can recover the costs relating to provisional legal aid from them, if they do not meet the eligibility criteria. Thus, it seems fair to limit the recovery of costs to cases, where the accused, suspected, or requested persons knowingly provided false information.

Moreover, it is important that accused, suspected or requested persons obtain a certain measure of legal certainty concerning the eligibility criteria. The eligibility criteria mentioned in the Commission's Recommendation provide some clarity, but do not amount to full harmonisation. That seems justified, since it would simply be impossible and also unnecessary to provide detailed European legislation in this respect, considering the differences between Member States when it comes to the costs of judicial procedures. At the same time, this also means that a general description of the means and merits tests, as included in the Recommendation, or at least elements thereof, could just as well have been incorporated in the Directive. The Rapporteur favours such an approach.

The Rapporteur is aware of differences between Member States in respect of the quality of legal assistance offered. This depends, inter alia, on the fees provided to lawyers for legal aid. If these fees are too low, the lawyers will not be willing to devote enough time and efforts to provide for high quality legal aid. Again, considering the differences in income and cost levels between Member States, it is not possible to provide for detailed rules on the level of the fees. However, this makes it all the more important to include at least some safeguards concerning the quality of the legal assistance offered in the Directive.

In particular, the provision that the preference and wishes of the suspects or accused persons and requested persons should as far as possible be taken into account with respect to the choice of the legal aid lawyer, merits to be included in the Directive. The same holds for the need for continuity in legal representation, if the suspected, accused or requested person so wishes. Provision should also be made for replacement of the legal aid lawyer, if the suspected, accused or requested person has lost all confidence in the lawyer and can motivate this on verifiable grounds. Currently, such a provision is even missing in the Recommendation.

Finally, the Rapporteur considers Article 6 of the Directive rather vague: it is difficult for Member States to collect data with regard to the implementation of the Directive for each individual case. The reporting obligation should instead concentrate on the problems encountered with the implementation, either from the perspective of the suspected, accused or requested persons, or from that of the competent authorities.

## PROCEDURE

<b>Title</b>	Legal aid for suspects or accused persons deprived of liberty and legal aid in European arrest warrant proceedings		
<b>References</b>	COM(2013)0824 – C7-0429/2013 – 2013/0409(COD)		
<b>Date submitted to Parliament</b>	27.11.2013		
<b>Committee responsible</b> Date announced in plenary	LIBE 13.1.2014		
<b>Committees asked for opinions</b> Date announced in plenary	JURI 13.1.2014		
<b>Not delivering opinions</b> Date of decision	JURI 3.9.2014		
<b>Rapporteurs</b> Date appointed	Dennis de Jong 3.9.2014		
<b>Discussed in committee</b>	16.10.2014	11.12.2014	6.5.2015
<b>Date adopted</b>	6.5.2015		
<b>Result of final vote</b>	+: -: 0:	47 7 0	
<b>Members present for the final vote</b>	Heinz K. Becker, Malin Björk, Michał Boni, Bodil Ceballos, Caterina Chinnici, Rachida Dati, Agustín Díaz de Mera García Consuegra, Tanja Fajon, Laura Ferrara, Monika Flašíková Beňová, Ana Gomes, Nathalie Griesbeck, Sylvie Guillaume, Jussi Halla-aho, Filiz Hyusmenova, Sophia in 't Veld, Eva Joly, Barbara Kudrycka, Kshetu Kyenge, Marju Lauristin, Monica Macovei, Vicky Maeijer, Roberta Metsola, Péter Niedermüller, Soraya Post, Judith Sargentini, Birgit Sippel, Branislav Škripek, Csaba Sógor, Helga Stevens, Traian Ungureanu, Harald Vilimsky, Josef Weidenholzer, Cecilia Wikström, Kristina Winberg, Tomáš Zdechovský		
<b>Substitutes present for the final vote</b>	Hugues Bayet, Andrea Bocskor, Pál Csáky, Dennis de Jong, Gérard Deprez, Jeroen Lenaers, Salvatore Domenico Pogliese, Emil Radev, Christine Revault D'Allonnes Bonnefoy, Barbara Spinelli, Jaromír Štětina, Josep-Maria Terricabras, Anders Primdahl Vistisen, Axel Voss		
<b>Substitutes under Rule 200(2) present for the final vote</b>	Lynn Boylan, Rosa D'Amato, Jörg Leichtfried, Piernicola Pedicini		
<b>Date tabled</b>	18.5.2015		