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EUROPEAN COMMISSION

Brussels, 8.6.2011  
SEC(2011) 686 final

**COMMISSION STAFF WORKING DOCUMENT**

**IMPACT ASSESSMENT**

*accompanying the*

**Proposal for a**

**DIRECTIVE OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL ON  
THE RIGHTS OF ACCESS TO A LAWYER AND OF NOTIFICATION OF  
CUSTODY TO A THIRD PERSON IN CRIMINAL PROCEEDINGS**

COM(2011) 326 final  
SEC(2011) 687 final

# COMMISSION STAFF WORKING PAPER

## IMPACT ASSESSMENT

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### **DIRECTIVE OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL ON THE RIGHTS OF ACCESS TO A LAWYER AND OF NOTIFICATION OF CUSTODY TO A THIRD PERSON IN CRIMINAL PROCEEDINGS**

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## INTRODUCTION

*The impact assessment is for a measure on the right to access to a lawyer<sup>1</sup> for suspects and accused persons<sup>2</sup> in criminal proceedings and the right of a suspect or accused person who is deprived of their liberty to have the fact of their custody notified to a third person, most commonly a relative, employer or consular authority. This measure aims at setting minimum rules governing the provision of legal advice and notification of custody across the EU. This will not only strengthen the fair trial rights of suspects and accused but it will also ultimately benefit the overall quality of justice within the EU through improving judicial cooperation between its Member Countries.*

The right to an effective remedy and to a fair trial, presumption of innocence and a right of defence are laid down in the Charter of Fundamental Rights of the European Union in Article 47 and Article 48 and have the same meaning and scope as the rights guaranteed by Article 6(3) of the ECHR. Both the right of access to a lawyer and the right to notification of custody provide formal safeguards against ill-treatment and thus protect against a potential breach of Article 3 ECHR (prohibition of ill-treatment). The right to notification of custody promotes the right to respect for private and family life in Article 8 ECHR. The 1963 Vienna Convention on Consular Relations (VCCR)<sup>3</sup> provides that on arrest or on detention a foreign national has the right to ask for his consulate to be informed of the detention and to receive visits from consular officials. The existence of these common principles has proved not to be sufficient to achieve the necessary level of mutual trust between Member States required for smooth functioning of the area of freedom, security and justice. In fact, despite these common principles, there still exist divergent rules and practices leading to shortcomings with regard to the way in which these rights are applied by the Member States.

This impact assessment accompanies the Commission's proposal for a draft Directive on access to a lawyer.

## 2. PROCEDURAL ISSUES AND CONSULTATION OF INTERESTED PARTIES

### 2.1. Policy context

Insufficient levels of mutual trust between Member States' judicial authorities affect cooperation in criminal matters between them and is an obstacle to mutual recognition of judgments and judicial decisions in that field. Since the 1999 adoption of the Tampere Conclusions, Member States have agreed that mutual recognition should be the cornerstone of judicial cooperation, that is, that judicial decisions taken in one Member State should be considered as equivalent to each other wherever that decision is taken, and so enforceable anywhere in the EU.

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<sup>1</sup> Terminology explanation: for the purposes of this impact assessment access to a lawyer will be used throughout to mean a right to legal advice and legal assistance. Legal advice means the advice (written or oral) given by the lawyer to the suspect or accused, legal assistance means the advice and other assistance given by the lawyer such as requesting documents, asking questions of the police or prosecutor and other tasks carried out for the benefit of the suspect or accused and legal aid means the financial assistance provided by the State to cover the costs of the legal advice and legal assistance (i.e. the lawyer's fees).

<sup>2</sup> A suspect is someone who is suspected of having committed a criminal offence but has not yet been formally charged. An accused person is someone who has been formally charged with an offence. Their rights are different according to their status. However, both categories are entitled to legal advice.

<sup>3</sup> United Nations, Treaty Series, vol. 596, p.261.

The Stockholm Programme (2010-2014) reiterates the importance of criminal judicial cooperation. A particular focus is on the rights of suspected and accused persons in criminal proceedings. The programme calls for a thorough examination of the minimum procedural rights for accused and suspected persons which it refers to as a fundamental value of the Union. It is recognised that judicial cooperation needs to be founded on mutual trust and confidence between the different judicial systems and the perception that the rights of suspects and accused persons are not respected in every instance has a disproportionately detrimental effect on mutual trust and, in turn, on judicial cooperation.<sup>4</sup> In fact, the Lisbon Treaty states that the principle of mutual recognition of judgements and judicial decisions should be facilitated by means of minimum rules on procedural rights.

To increase mutual trust, and thus improve the operation of mutual recognition, in November 2009 the Council of the European Union adopted the Roadmap on Procedural Rights<sup>5</sup> (Annex I, "the Roadmap") setting out a step-by-step approach to strengthening the rights of suspects and accused persons. This was incorporated into the Stockholm Programme<sup>6</sup> the following month (see section 3.1).

In the Roadmap, the Council invites the Commission to submit proposals on a number of measures to establish common minimum rules for fair trial rights in the EU.

Each measure will deal with a distinct procedural right or set of rights for suspects and accused persons as identified by Member States and stakeholders alike as needing to be strengthened by action at EU level. Measures may consist of binding legislation applying to every suspect in criminal proceedings in all Member States, thus protecting EU citizens and third-country nationals alike in all cases including cross-border proceedings. Such legislation may clarify existing rights or even create new ones at EU level, but only in relation to the respective specific issue each measure is supposed to address. The rights of suspects and defendants throughout the EU will therefore be strengthened step-by-step as set out below:

<b>Measures envisaged by the Commission as part of the Roadmap:</b>
- Translation and Interpretation (adopted on 7 October 2010)
- Information on Rights and Information about the Charges (currently under negotiation between co-legislators)
- Green Paper on Pre-Trial Detention
- Access to a lawyer and notification of custody
- Special Safeguards for Suspected or Accused Persons who are Vulnerable <sup>7</sup>
- Legal aid

<sup>4</sup> ULB study: lack of trust: para 18

<sup>5</sup> 2009/C 295/01

<sup>6</sup> 'An open and secure Europe serving and protecting the citizen' adopted December 2009.

<sup>7</sup> This measure will address the rights of juvenile and disabled suspects and accused persons in criminal proceedings.

The measure covered by this Impact Assessment on access to a lawyer and the right to notification of custody relates to the measures on "legal advice and legal aid" of the Roadmap (measure C); which aims to improve the situation of suspects by ensuring that these individuals receive proper access to qualified legal advice from the earliest stages of criminal proceedings, and to the measure on "communication with relatives, employers and consular authorities" (Measure D), which, in conjunction with the right of access to a lawyer, is one of the important safeguards against ill-treatment of detained persons. . Following a broad consultation with Member States and stakeholders, it was decided to split the Measure on "legal advice and legal aid" into two separate measures, leaving the right to legal aid to a later, separate proposal. In accordance with the personal scope of article 6 of the ECHR, this measure will cover also legal persons.

### Access to a lawyer

*Short explanation:* The right to access to a lawyer for the suspected or accused person in criminal proceedings at the earliest appropriate stage of such proceedings is fundamental in order to safeguard his rights to a fair trial and right of defence within the criminal proceedings.

#### Notification of custody

*Short explanation:* The right to have the right of one's detention notified to a third person as soon as possible after the deprivation of liberty is fundamental as a safeguard against ill-treatment of persons who have been deprived of their liberty and promotes the right to respect for private and family life.

## **2.2. Chronology of the Impact Assessment**

### *2.2.1. Consultation of stakeholders*

General principles and minimum standards for consultation of interested parties have been followed in relation to this initiative. The views of all major stakeholders and Member States were sought.

Stakeholders were consulted on several occasions. The Commission has regular and frequent contact with major stakeholders: the European Criminal Bar Association, the CCBE (Council of Bars and Law Societies of Europe), national Bar associations, European Network of Councils of the Judiciary, academics, NGOs such as JUSTICE, Amnesty International and Fair Trials International. The Commission has been researching this area of criminal law for over 9 years. It issued a Green Paper on procedural safeguards in February 2003<sup>8</sup> and has been consulting interested parties ever since; it has thus accumulated a body of information and views on what experts consider would promote fairer trials and greater mutual trust between Member States.

A Justice Forum<sup>9</sup> meeting was held in July 2008 to canvas views on the Université Libre de Bruxelles (ULB) study on mutual recognition<sup>10</sup> (see 2.2.2 (e) below). Most participants expressed their continuing wish to see legislation at EU level on procedural safeguards. There also was a 2-day experts' meeting devoted to procedural rights in March 2009. An experts meeting devoted to

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<sup>8</sup> Green Paper on procedural safeguards, COM (2003) 75 of 19.2.2003

<sup>9</sup> The Justice Forum, an expert group convening European representatives of all actors in the justice systems, including judges, prosecutors and defence lawyers, was constituted with the aim of providing an arena in which the Commission could consult its stakeholders. It meets 4-5 times a year for a themed discussion.

<sup>10</sup> "Analysis of the future of mutual recognition in criminal matters in the European Union" by Gisèle Vernimmen-Van Tiggelen and Laura Surano (Call for tenders JLS/D3/2007/03 European Commission) – 20 November 2008

Measures on legal advice and on notification of custody (measures C and D) of the Roadmap was held in Brussels on 11 and 12 October 2010 with representatives of stakeholders and Member States.

Virtually all stakeholders, and in particular NGOs active in the field of civil rights and liberties as well as representatives of Lawyers' Associations, have expressed very strong support for an EU initiative in this area. Most of them view shortcomings in access to a lawyer as one of the most formidable hurdles to the proper functioning of judicial cooperation and mutual recognition across the EU and underline the importance of notification of custody as a safeguard against the ill-treatment of suspects and accused persons who are deprived of their liberty.

### 2.2.2. *Studies and publications*

The IA relies on the findings of five separate studies carried out from 2007 to 2010<sup>11</sup> set out below in addition to information on notification of custody from the reports of the periodic country visits carried out by the Committee for the Prevention of Torture<sup>12</sup>

(a) An external study to gather evidence for this IA was commissioned on 25 October 2010. The study, carried out by consultants CSES, focused on policy options and costs of the various options.

(b) Under the JPEN (Criminal Justice) financial programme, the Commission funded a research project carried out by the German Federal Ministry of Justice and Maastricht University ("EU-Wide Letter of Rights in criminal proceedings: towards best practice") reviewing how suspects are informed about their rights in criminal proceedings in the 27 Member States, and considering the feasibility of a model 'Letter of Rights' to be applicable throughout the EU<sup>13</sup>. The research team submitted a final report in July 2010 detailing existing Letters of Rights in Member States that use them.

(c) In 2009, researchers from Maastricht and Ghent Universities carried out a comprehensive review of procedural rights in the EU<sup>14</sup> for the Commission. The study identified current practice as regards access to lawyers for suspects and accused persons in all Member States.

(d) "Effective Criminal Defence Rights in Europe", a study funded under the JPEN Programme, is a joint initiative of JUSTICE, the University of the West of England, the Open Society Justice Initiative and Maastricht University. It was carried out over a 3 year period (2007-2010) and provides empirical information on the extent to which procedural rights that are indispensable for an effective defence, such as the right to information, are provided in practice in 8 EU Member States and one accession country (Turkey). Results from the study were used as part of this impact assessment<sup>15</sup>.

(e) The "Analysis of the future of mutual recognition in criminal matters in the European Union",<sup>16</sup> carried out by ULB involved national experts carrying out research in their home Member State

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<sup>11</sup> Additional sources of information used in preparing this Impact Assessment are provided in the annexes

<sup>12</sup> <http://www.cpt.coe.int/en/visits.htm>

<sup>13</sup> JLS/2008/JPEN/032

<sup>14</sup> EU procedural rights in criminal proceedings – Taru Spronken, Gert Vermeulen, Dorris de Vocht, Laurens Van Puyenbroeck – JLS/2008/D3/002.

<sup>15</sup> The research project covers nine countries: Poland, Hungary, Belgium, France, Italy, Germany, England and Wales and Finland and an accession state (Turkey). "Effective Criminal Defence in Europe" by Ed Cape, Zaza Namoradze, Roger Smith and Taru Spronken.

<sup>16</sup> "Analysis of the future of mutual recognition in criminal matters in the European Union" by Gisèle Vernimmen-Van Tiggelen and Laura Surano (Call for tenders JLS/D3/2007/03 European Commission) – 20 November 2008

through in-depth interviews and questionnaires with practitioners, civil servants of ministries of justice responsible for negotiation and transposition of mutual recognition instruments, judges, defence lawyers, liaison magistrates and prosecutors. The report found that defence rights had been neglected in the development of mutual recognition. Levels of trust between Member States were not sufficient and the EU was encouraged to do more to redress the balance between facilitating prosecution and protecting the rights of suspects and accused persons.

### *2.2.3. Internal consultation and scrutiny of the Impact Assessment*

An Interservice Impact Assessment Steering Group was created involving representatives from DGT, DG SCIC, DG COMP, DG MARKT, DG RELEX, DG ELARG, OLAF, the Legal Service and the Secretariat-General. An IASG meeting was held on 1<sup>st</sup> February 2011. At the meeting and in subsequent communication with individual DGs, comprehensive feedback was received which has been taken into account throughout this report (Annex VI).

This Impact Assessment was examined by the European Commission's Impact Assessment Board on 23 March 2011. Further to the IAB's recommendations, additional information, explanations and data were introduced in this document. In particular, the presentation of the policy options 3 and 4 has been improved, in order to show the status quo in Member States and the viability of both options. In addition, clarifications have been added on the cost of the base line option, which relates to the need for Member States to comply with the jurisprudence of the ECtHR. The calculation of costs for Member States stemming from options 3 and 4 have been refined, by removing the reference to average Member State and by providing instead examples of cost for different groups of Member States. Lastly, the views of stakeholders have been better explained and reflected across the document.

## **3. 3. PROBLEM DEFINITION**

*Despite the existence of common principles and minimum standards stemming both from the ECHR and the EU Charter, provisions governing access to a lawyer and notification of custody vary significantly from one Member State to another. Moreover, the criminal justice procedure of a significant number of Member States has serious shortcomings even when measured against these minimums criteria for access to lawyers and notification of custody.*

*This lack of adequate standards affects the overall quality of justice within the EU and undermines judicial cooperation between Member States. If judicial authorities have doubts about the compliance with fair trial rights (and in particular with the pivotal right of access to a lawyer) and protection against ill-treatment in custody in another jurisdiction, they may be unwilling to execute requests for judicial cooperation emanating from that jurisdiction, e.g. to order the surrender of a suspect or the sending of evidence for use in a trial.*

*Insufficient standards across Member States are also detrimental to the protection of accused persons' and suspects' fundamental rights, as proper access to a lawyer and notification of custody is essential in order to secure all other fair trial rights as well as to prevent intimidation including threat and abuse, notably by police staff in the crucial period immediately following arrest.*

Before addressing the specific problem as it relates to the right to access to a lawyer and notification of custody, this section will deal with the general problem as it permeates all the measures envisaged in the Roadmap.



### 3.1 The general problem

#### 3.1.1 *Insufficient mutual trust between Member States*

Evidence<sup>17</sup> and consultation<sup>18</sup> point to the problem of insufficient mutual trust between judicial authorities. Judges and prosecutors throughout the EU have argued that this must be addressed. They stress that the difficulties in the application of EU cooperation measures can be felt in day to day practice but are not always translated into a higher number of refusals to surrender persons requested under European Arrest Warrants.

#### 3.1.2 *Insufficient level of protection of fundamental rights in criminal proceedings*

The need to facilitate prosecution and enforcement of sentences while protecting fundamental procedural rights of the individual was already highlighted by the Commission proposal for EU legislation put forward in 2004.<sup>19</sup> However, discussions on procedural rights within the EU had, for many years, not led to any concrete results.

The Commission has a mandate to act on a series of measures, which, taken together, will create a high standard of fundamental rights going well beyond the protection currently offered by Arts 5 and 6 ECHR. Taking this course will also give a specific EU meaning to the fair trial safeguards enshrined in Arts 47 and 48 of the EU Charter.

As a first step, on October 2010, the Council of the European Union adopted the Directive 2010/64 on the right to interpretation and translation in criminal proceedings. The second measure envisaged in the Roadmap, concerning the right to information in criminal proceedings, is being currently negotiated by the co-legislators and its adoption is expected during 2011.

The introduction of minimum rules across the EU by implementation of the Procedural Rights Roadmap, therefore, will reassure citizens of the quality of the criminal justice system of all Member States.

In addition, the strengthening of fair trial standards will reinforce the image of the EU on the world's stage as standard-setter on fundamental rights and the rule of law<sup>20</sup>.

### 3.2 The specific problem: insufficient access to a lawyer and notification of custody

Currently, no adequate and properly enforced standards govern the provision of access to a lawyer

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<sup>17</sup> ULB study, para 18. This assessment is supported by testimony of European Judicial Network members.

<sup>18</sup> Justice Forum July 2008.

<sup>19</sup> Proposal for a Council Framework Decision on certain procedural rights in criminal proceedings throughout the EU, COM (2004) 328 of 28 April 2004.

<sup>20</sup> The new harmonised minimum standards will also be part of the benchmarks (OT would like to have it reformulated so as to avoid against) against which candidate countries and potential candidate countries will have to measure their legislation if they are to enter the Union. Therefore, action in this field will have a positive impact on the functioning of justice in, and on the human rights record of, countries which are at the moment not members of the EU but which aspire to future membership. This may in turn exert pressure to raise standards in third countries further afield, whenever these States look at neighbouring (candidate) countries for standard-setting, spontaneously or as a consequence of bilateral treaties which so require.

and notification of custody across the EU. This entails adverse effects for judicial cooperation between Member States, which is the main problem (**Problem A**) Adverse effects exist also for the fundamental right of suspect and accused persons (the additional problem, or **Problem B**)

- **Problem A:** Lack of adequate and consistent standards as regards access to lawyers and notification of custody weakens trust between judges and prosecutors of different Member States as divergences in practice and a number of high profile cases have damaged the perception of justice in certain Member States. In practice this means that judges may hesitate to agree to judicial cooperation requests from other Member States whose criminal procedure has showed serious shortcomings with regard to access to a lawyer and notification of custody. The situation will become exacerbated as more mutual recognition instruments become applicable in Member States, following on from the European Arrest Warrant (*see section 3.2.1*).
- **Problem B:** Failure to provide proper access to legal advice may render the criminal proceedings unfair and jeopardize the other suspects/accused defence rights as such access is a recognised fair trial guarantee which together with the right of notification of custody serves as a preventative measure against abuse and forced confessions (*see section 3.2.2*).
- Both these **two problems** should be considered on the basis of **five parameters** (*see section 3.3*)

The EU Charter of Fundamental Rights, in cases when EU law is applied and the ECHR, are not enough to redress the situation for various reasons set out in this Impact Assessment (*see section 3.4*)

### 3.2.1 **Problem A:** Adverse effects on judicial cooperation between Member States

Instances of failure to provide prompt access to expert legal advice and to have the fact of detention notified to a third party undermine trust in the fairness of criminal proceedings conducted in other Member States. Perceptions of potential unfairness hamper cooperation in criminal matters between Member States which cooperation is based on mutual recognition of judicial decisions across the EU because in order for mutual cooperation measures to be fully effective, judges and others must have trust and confidence in the quality of justice available in the criminal justice systems of other Member States. This can affect the application of mutual recognition instruments, for instance the European Arrest Warrant, under which a Member State is expected to surrender suspects or convicted persons, including its nationals, rapidly and without examination of the case file, for trial or to serve a custodial sentence in another Member State. Stakeholders, and in particular EU-wide associations of lawyers such as the ECBA and the CCBE and associations representing judges and prosecutors (but also NGOs such as Justice or Open Society), have been drawing the Commission's attention to the link between lack of minimum standards for fair trial rights at EU level and the sub-optimal functioning of judicial cooperation in the EU.

All instruments aiming to facilitate judicial cooperation between Member States rely on the principle of mutual recognition: a decision of a court in one Member State (the issuing state), such as an arrest warrant or a final judgment imposing a prison sentence, shall be recognised and enforced by the courts of another Member State (the executing state) and treated as equivalent to their own decisions, i.e. without any further review of the decision or any lengthy recognition

proceedings. Such quasi-automatic mutual recognition presupposes mutual trust between judges and courts throughout the EU in the fairness of criminal proceedings and the lawfulness of the decisions to be enforced. Thus Member State courts have already refused to execute EAWs on account of a probable violation of the sought person's fair trial rights upon surrender to the issuing Member State.<sup>21</sup>

This case illustrates that the provision of prompt access to qualified legal advice from the earliest applicable stage of the criminal proceedings is crucial to safeguard the fairness of such proceedings. It will have therefore to be ensured that adequate EU-wide standards are adopted to govern the provision of legal assistance and the consequences of its violations across the EU. Only where judges throughout the EU can have the confidence that all Member States provide suspects and accused persons with proper access to a qualified counsellor, will these judges be inclined to order the execution or enforcement of a judicial decision taken in criminal proceedings in another Member State.

But even where another Member State's court decision is eventually enforced by the courts in the executing Member State, the swift operation of judicial cooperation instruments can be hampered significantly. This is the case where the person sought on the basis of an EAW appeals against a decision to recognise and execute the EAW and, eventually, brings an application against the Member State wishing to surrender him before ECtHR, citing a likely infringement of his fair trial rights in the Member State seeking his surrender. Appeals account for significant costs (albeit difficult to quantify) in terms of docket backlog, delayed justice and victims' dissatisfaction. Appeals to the ECtHR can cost Member States several thousands of Euros per case only as concerns liquidated damages, without factoring in the legal fees of State attorneys and the reputational costs of a condemnation by the Court for the justice system.

This risk is expected to be magnified when those mutual recognition measures adopted at EU level since the EAW Framework Decision<sup>22</sup> have been implemented and when Member States seek to enforce freezing orders, financial penalties or the transfer of convicted persons serving a custodial sentence to another Member State.

Insufficient or delayed access to a legal counsel is a common feature of cases that are known to have attracted media attention. These cases, although the exception rather than the rule, are likely to have adverse effects on the reputation of a Member State's criminal justice system as it only takes one high profile case to erode trust and thus jeopardise judicial cooperation. The NGO Fair Trials International (FTI) has reported that even when the right to legal assistance exists in theory, it is sometimes not safeguarded in practice and that this can have serious consequences given the increasingly frequent use of instruments like the EAW. The CPT in its contact with detainees in the course of its country visits has identified repeated instances where although the right to notification of custody exists in statute, in practice it is not offered to all detainees or offered with considerable delays (often only after a certain stage is reached – i.e. being brought before a judge) and they identified many instances where there is no feedback to the detainee in respect of the contact made with their nominee.

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21 E.g. Case AU7667, *Rechtbank Amsterdam* (judgment of 4 January 2006); *Lisowski v Regional Court of Bialystok* [2006] EWHC 3227 (Admin), High Court of England and Wales (judgment of 28 November 2006). Generally, it has to be noted, though, that the average refusal rate throughout the EU currently stands at 4 to 8 %.

22 Such as the Framework Decisions on Financial Penalties, Confiscation, Freezing Orders, European Evidence Warrant, Transfer of Prisoners and European Supervision Order.

## GARY MANN CASE

This case provides ample illustration of the consequences that the lack of procedural safeguards, and in particular inadequate access to a lawyer, has on intra-EU judicial cooperation.

Gary Mann, a 51 year old fireman from Kent went to Portugal during the Euro 2004 football tournament and was arrested on 15 June 2004 while he was with friends in a bar in Albufeira, and while a riot took place in a nearby street.

Together with several other football supporters he was tried the following day. All twelve defendants in the case were represented by only one lawyer. This, and the lack of time before the hearing, meant Mann was unable properly to instruct his lawyer. Furthermore, due to the quality of interpretation and translation provided he was unable to understand or participate in the proceedings. His arrest, trial and conviction took place in less than 48 hours and ended in his being sentenced to two years' imprisonment on 16 June 2004. On 18 June 2004 he voluntarily agreed to be deported and was told that, provided he did not return to Portugal for a year, he would not have to serve his sentence.

Back in the UK, Mann tried unsuccessfully to appeal his conviction. In October 2004 he lodged an appeal to the Constitutional Court in Lisbon but nothing was heard from the court. Separately, the Metropolitan police applied for a worldwide football banning order against him, but in 2005 the UK Court held he had been denied a fair trial in Portugal and refused the order. The next development was that Mann was arrested on an EAW, which alleged he was wanted in Portugal to serve a two year prison sentence and, in August 2009, a UK court eventually ordered his extradition to Portugal.

The execution of the Portuguese EAW by UK courts, however, took more than 14 months (in contravention of the Framework Decision on the EAW, which provides for a sixty-day deadline) and involved five decisions by UK courts, with several thousands of Euro spent on legal fees and costs of proceedings. The source of the problem was inadequate access to lawyer. An application was also lodged at the ECtHR, where Mann argued that his accelerated trial had been, unfair owing to failure on the part of the Portuguese authorities to provide him with proper access to a lawyer.

In the absence of serious issues surrounding the availability of adequate procedural safeguards in the issuing Member State, the execution of the EAW would have been effected significantly more swiftly than was the case and in compliance with the applicable EU legislation. See *R (on the application of Gary Mann) v City of Westminster Magistrates' Court* [2010] EWHC 48 (Admin) (judgment of 19 January 2010).

Mann was surrendered to a Portuguese prison in May 2010, where he remains today, although he is due to be transferred back to the UK where he will continue to serve his sentence.

### CPT visits

**Czech Republic:** The CPT recorded that "the delegation met a person who had been apprehended at 3a.m. in Prague but only detained in a cell in Kongressova Police Headquarters in Prague at 2pm (some eleven hours later) and who, a little while later, had **still not been able to contact his family**"

**Latvia:** The CPT noted that "the right to notification of custody "often became effective in practice only when the detention protocol was drawn up, and not at the outset of deprivation of liberty. Further, a number of detained persons alleged that police officers had not allowed them to exercise this right for periods of up to 24 hours"

**Denmark:** "A number of detained persons (including juveniles) interviewed by the delegation during the 2008 visit complained that they had not been allowed to contact their relatives in person and did not know whether the person had informed them of the fact of their detention"

**Sweden:** "a senior police officer at Örebro Police Department stated that the police are not obliged to notify the family during the first 96 hours, which are a "crucial stage" of the investigation; the same officer indicated that, if the relatives of detained persons phone to enquire about their whereabouts, the police cannot tell them that they had been detained as the information about detention becomes public only after the court hearing."

### 3.2.2 Problem B: Adverse effects on fundamental rights of accused and suspected persons

The need for a suspect or accused to have access to a lawyer - and for that legal access to be effective - is a key ingredient in placing suspected or accused citizens in a position to defend themselves properly in the face of the investigating authorities possessing greater powers. In addition having the fact of one's custody notified to a third person safeguards the fundamental right not be subjected to ill-treatment while in detention.

If someone is arrested or required to attend a police station in connection with an enquiry into a crime, they have certain rights, such as the right to remain silent or to have an interpreter present if they are a foreigner who does not speak the language of the proceedings. Without proper access to a lawyer, however, the effective exercise of these, as well as of most other defence rights, may remain illusory.

Therefore, where suspects and accused persons are not adequately provided with prompt access to qualified legal assistance, this can render the criminal proceedings unfair, as ruled by the European Court of Human Rights in the landmark case of *Yusuf Salduz v. Turkey* (see box below):<sup>23</sup> a suspect might not be aware that he has the right to remain silent during police questioning and may thus make statements under the psychological pressure of detention which might be unduly incriminating and could be relied on at trial by the prosecution.

A suspect who is convicted on the basis of his initial statement may appeal against his conviction and succeed in having the conviction overturned by an appellate court; the costs of the initial trial would thus be wasted (very often, the cost of a criminal case going all the way up to the Supreme Court is in the region of € 10-20,000, without considering reputational damages and costs for the defendant which are usually non recoverable even when he is eventually acquitted). Similarly, a suspect held in pre-trial detention might appeal against the Court order although he might have chosen not to do so if he could have availed himself of qualified legal advice from the outset of deprivation of liberty. Appeals and aborted proceedings such as this result in unnecessary costs for the Member State in which these criminal proceedings take place: court costs and costs of keeping a suspect in pre-trial detention<sup>24</sup>. In addition, account must be taken of consequential costs in other Member States, for example when a judicial authority in another Member State is requested judicial cooperation which it refuses to provide due to concerns about the fairness of proceedings in the issuing State.

Eventually, suspects or accused persons might lodge applications with the ECtHR based on lack of proper access or ineffectiveness of legal assistance. This inevitably has cost consequences for those Member States, both in terms of the cost of the ECtHR proceedings themselves and, more significantly, the consequences of the ECtHR's judgment on those Member States' justice systems in relation to appeals, potential re-trials for ongoing cases, etc. The average liquidated damages awarded by the ECtHR to a successful applicant, in a range between € 3,000 and 9,000. This figure, if multiplied by the number of findings of breaches of Article 6 ECHR which are (directly or indirectly) related to the right of access to a lawyer over the last seven years<sup>25</sup>, would result in an amount of **€4.23 million to €12.69 million** spent by Member States over the next ten years.

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<sup>23</sup> *Salduz v. Turkey* (judgment of 27 November 2008, GC, §§ 53-55). See also the following ECtHR cases: *Ocalan v. Turkey* (judgment of 12 May 2005); *Adamkiewicz v. Poland*, (judgement of 2 March 2010, § 84); *Dayanan v. Turkey*, (judgement of 13 October 2009, § 32); *Panovits v. Cyprus*, (judgement of 11 December 2008, §§ 69-77).

<sup>24</sup> These costs vary significantly by Member State: in England and Wales, the costs of one day in prison average 130 € per day; in Germany they are around 70 € per day.

<sup>25</sup> Over the period 2003-2009, 990 findings of violation of Article 6 ECHR were linked, directly or indirectly, to the right of access to legal advice: cf. European Court of Human Rights, Annual Reports from 2003 to 2009.

Stakeholders who participated in the consultation process came out very forcefully in favour of EU minimum rules on the right of access to a lawyer and have argued that this is the single most effective way to strengthen all the other fair trial rights (access to a lawyer is seen as "the gate in the house of procedural rights", in the words of a participant at the experts' meeting organised by DG JUST in October 2010). The right of access to a lawyer is complemented by the right of notification of custody to a third party, which in most cases will arise at the same time and as experts at the October 2010 experts meeting agreed is a fundamental safeguard against ill-treatment

#### **SALDUZ DOCTRINE:**

In *Salduz v Turkey* (*Salduz v. Turkey*, GC, 27 November 2008) the ECHR held that there had been a violation of Article 6 of the European Convention which guarantees the right to a fair trial because Salduz who was under eighteen at the time of the offence was denied legal assistance while in police custody, during which time he made a confession which he later claimed was made under duress. The ECHR said that Article 6 "requires that, as a rule, access to a lawyer should be provided as from the first interrogation of a suspect by the police, unless it is demonstrated in the light of the particular circumstances of each case that there are compelling reasons to restrict this right. Even when compelling reasons may exceptionally justify denial of access to a lawyer, such restriction- whatever its justification – must not unduly prejudice the rights of the accused under Article 6...the rights of the defence will in principle be irretrievably prejudiced when incriminating statements made during police interrogation without access to a lawyer are used for a conviction."

#### **PANOVITS CASE:**

This case demonstrates the degree of the impact that insufficient access to a lawyer may have on suspects/accused fundamental rights as well as on the overall fairness of the proceedings

P, at the time just 17 years old, was invited with this father to visit the police station in connection with a murder and robbery. P confessed his guilt after being subjected to police questioning for about 30-40 minutes. He was not provided with access to legal advice either immediately after his arrest or during questioning (the police only suggested to P's father that P find a lawyer while the latter was being interrogated).

P's confession was decisive for the prospects of his defence and constituted a significant element on which his conviction was based. During the interrogation, a police officer put his gun on the desk and told P he should hurry up as the police had other things to do. The police officers also told him that if he wanted to go he should confess.

P was sentenced in May 2001 to 14 years' imprisonment for manslaughter and robbery. In March 2008 the ECtHR found that the lack of assistance during P's interrogation breached his right to a fair trial guaranteed by article 6 of the ECHR. It also held that there had been a violation of Article 6 § 1 due to the use of the applicant's confession in his main trial.

#### **CPT REPORTS ON NOTIFICATION OF CUSTODY**

CPT reports show that in at least 21 Member States the right of access to a lawyer and the right to notification of custody are combined into one piece of legislation or even one statutory provision. Irish legislation (Section 5 of the Criminal Justice Act 1984) combines both rights into one statutory provision entitled "Access to Solicitor and notification of detention," which provides as follows: "*Where a person not below the age of seventeen years is detained in a Garda Siochana station pursuant to Section 4 (detention after arrest), the member of the Garda Siochana in charge of the station shall inform him or cause him to be informed without delay that he is entitled to consult a Solicitor and to have notification of his detention and of the station where he is being detained sent to one other person reasonably named by him and shall, on request, cause the solicitor and the named person to be notified accordingly as soon as practicable.*"

The CPT has consistently identified a trilogy of rights for suspects and accused persons that provide protection against ill-treatment. They noted in their 2008 visit to Denmark "*The CPT recalls that it attaches particular importance to the formal safeguards against ill-treatment which are offered to persons deprived of their liberty by the police, in particular the rights of detained persons to inform a relative or another third party of their situation, to have access to a lawyer and to access to a doctor.*" While access to a doctor is not a procedural right

and dependent on particular circumstances of each case, access to a lawyer and notification of custody are entirely complementary

### **3.3 Key parameters to be considered in respect of the right to access to a lawyer and notification of custody.**

The following five parameters provide a break down of the two problems as defined above. These parameters have been identified on the basis of recurrent complaints by stakeholders, in particular lawyer's associations, and the most oft-invoked grounds for applications to the ECtHR by defendants who feel they have not received a fair trial. In addition, numerous violations of Article 6 ECHR found by the ECtHR are due to shortcomings of access to a lawyer related to these parameters. For each parameter, information is provided on the *status quo* in Member States. A more detailed overview of such state of play is provided in Annexe III.

- **The moment from which a suspect is allowed to see a lawyer; the moment from which the fact of deprivation of liberty is notified to a third party nominated by the detainee; is the person entitled to a lawyer throughout all the proceedings? (Temporal scope)**

In a significant proportion of Member States, the right to contact a lawyer cannot be exercised immediately after arrest but only some time after arrest or at a different stage of the investigation. Only in three Member States (Malta, Luxembourg and Denmark), is a suspect entitled to meet with his lawyer some time before a police interrogation. Therefore, in the majority of jurisdictions access to a lawyer occurs at a stage where the suspect may have had to speak with the police. This can lead to self-incriminatory statements given by suspects without the assistance of a lawyer, consequent challenges about the validity of such evidence, lengthy appeal proceedings and the attendant mistrust by other Member States' judicial authority's vis-à-vis jurisdictions characterised by such shortcomings. In respect of notification of custody, the CPT found that in six Member States, the right to notification of custody was in practice repeatedly not afforded to detainees. In 11 Member States, the CPT identified systematic delays (identifying periods of 6, 24 and even 96 hours in one Member States) in the communication by the detaining authorities of the fact of the detention to the outside world. The CPT has also identified many instances where there is no or inadequate feedback to the detainee and they are not aware therefore if the notification of their custody to their nominee has been made.

- **What activities can the lawyer carry out on behalf of his client? (Material scope)**

In eleven Member States, it is possible to supervise the oral and/or the written communication between lawyer and suspect and to limit the right of the lawyer to visit his client at the police station or in prison. Even amongst those Member States, research noted a great variance in terms of the grounds allowing domestic authorities to restrict the right of accused/suspects in criminal proceedings to consult a lawyer. As far as this divergence in practice is concerned, the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT) has stressed that it is essential that the defence lawyer can visit his client at the police station and in prison as from the beginning of the deprivation of liberty and that is out of hearing of third parties and/or without its contents being monitored by any technical means. Provision of proper access to legal advice out of hearing of third parties at the very outset of detention will give the individual concerned the possibility of making use of those rights (such

as the right to remain silent) and thus help prevent intimidation and ill-treatment by police staff in the crucial period immediately following arrest.<sup>26</sup>

- **Waiving the right to a lawyer**

In relation to circumstances in which legal assistance in criminal proceedings is obligatory, law and practice also vary considerably from one Member State to another<sup>27</sup>. In some cases, the factual and/or legal complexity of the case is a relevant factor. Only in two Member States are there no provisions for mandatory defence. In one Member State (Italy) the assistance of a lawyer is always obligatory in criminal cases.

- **What are the consequences for a Member State which fails to respect the suspect/accused's right to a lawyer and /or notification of custody? (consequences of violations)**

Only in three Member States (Spain, Italy, Portugal), it is not allowed to use as evidence in court statements made by a suspect in the absence of his lawyer. The lack of a prohibition to use such evidence in court is conducive to lengthy litigation (and possible appeals to the ECtHR), which in turn affects the credibility of the justice system and is liable to generate mistrust in judicial authorities from other Member States. The risk of ill-treatment-including the risk of detaining authorities being more vulnerable to false accusations of ill-treatment in custody-is heightened where notification of custody is not carried out promptly. In the few Member States the CPT identified any sanction existing in Member States; it is most commonly disciplinary action against for detaining police officers where the right is not observed.

- **Does the right to access to a lawyer apply when the suspect/accused is subject to an EAW? (European Arrest Warrant)**

In none of the Member States, there are legal provisions regulating the access to legal advice when the Member State concerned is the issuing state. As concerns the executing Member State, a generic provision in the Framework Decision on the European Arrest Warrant provides that the person subject to an EAW will have access to a lawyer if the domestic law so provides. Therefore, this provision is by itself not sufficient to ensure the assistance of a lawyer across all Member States. The EAW Framework Decision does not expressly provide for the right of notification of custody for those subject to an EAW and deprived of their liberty for the purposes of its execution.

The purpose of the following **case studies** is to show real life examples of failures of access to legal assistance as guaranteed under Article 6 of ECHR in Member States. These examples<sup>28</sup> cover each of the five parameters listed above.

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<sup>26</sup> CPT, *The CPT standards – "Substantive" sections of the CPT's General Reports*, CPT/Inf/E (2002) 1 – Rev. 2009, p11; CPT Report Germany, CPT (2006) 36, adopted on 7 July 2006 as published by the Government of the Federal Republic of Germany on <http://www.bmj.bund.de/files/-/2044/CPT%20Report%202006.pdf>.

<sup>27</sup> EU procedural rights in criminal proceedings, p. 78.

<sup>28</sup> Most of these examples have been provided by the British Ngo *Fair Trials International* (FTI)



### **1 Temporal Scope: Panovits v Cyprus** and CPT Reports

See boxes under paragraphs 3.2.1 and 3.2.2

### **2. Material Scope: Kevin Keogh (KK)**

KK, an Irish national, has been working as a lorry driver since 1995. Less than six weeks into a new job with an Irish haulier, French Customs officers pulled his lorry out of a queue at the French boarder town of Perthus on a return journey from Spain. His trailer was searched but nothing was found. Customs officers then offloaded the 4 batches of ceramic tiles that Kevin had loaded in Spain and broke through the metal floor of the trailer. A total of 1032 Kg of Cannabis resin was found.

No lawyer was present at the police interview. In the meantime, shortly after Kevin's arrest, the Irish police arrested his employer and charged him with the importation of drugs into Ireland. When questioned about Kevin, the employer readily admitted that he had used him as a drugs mule without his knowledge. The Irish police informed their French counterparts of this, but the information did not seem to reach the investigating magistrate.

On 18 November 2003, Kevin was released on bail after 18 months on remand and allowed to return to the UK. It is not known yet whether the charges against him will be dropped or whether he will have to return to France and stand trial.

### **3. Waiving the right to a lawyer: Yaremenko**

Y was arrested on suspicion of murdering a taxi driver and of several other crimes committed in 2001. His lawyer attended the initial questioning of the applicant. Subsequently the applicant was questioned regarding his involvement in the death of another taxi driver in the summer of 1998. This crime was classified as infliction of grievous bodily harm causing death, for which legal representation of a suspect was not obligatory. Y signed a waiver of his right to counsel. Y was then questioned and confessed that he and another had committed the 1998 crime. Immediately after the confession was obtained, the crime was reclassified as, and the applicant was charged with, murder.

Later, in his lawyer's presence, Y denied his involvement in the 1998 crime. The same day, Y signed a waiver in respect of his counsel on the ground that the latter had prevented him from confessing to the 1998 crime. Y's lawyer was removed from the case and told that he had breached professional ethics by advising his client to assert his innocence and retract part of his previous confession.

The ECtHR held that Y did not benefit from the requirement of obligatory representation and was placed in a situation in which he was coerced by the police into waiving his right to counsel and incriminating himself.

### **4. Consequences of violations: Peter Cadder**

Peter Cadder was suspected by the police in Glasgow of being involved in an attack on two men in May 2007. On the day of the incident, he was first detained by the police at his home on the grounds of his suspected part in the assault and he was cautioned by being told that he was under no obligation to answer any questions other than those required for his identification. He said nothing and was taken to the police station. A few minutes after arriving he was again cautioned in the same way and then informed that he was entitled to have notice of his detention given to a solicitor, but he turned this down. Thereupon he was interviewed under caution by two police officers and made a number of admissions. He was told that he was no longer being detained as a suspect but was being placed under arrest, following which he was cautioned again and then charged with various offences relating to the assault. He did not reply to any of the charges. Over a year later an identification parade was held at which Peter Cadder was recognised as an attacker by one of the severely injured victims of the assault. At the trial in May 2009 the prosecution advanced evidence of Cadder's identification by the victims, as well as playing the audio record of his

<sup>29</sup> This is the provisional estimate provided by the British Ngo JUSTICE (<http://www.justice.org.uk/enterb/index1.html>)

<sup>30</sup> *Journal of the Law Society of Scotland*, "Emergency bill to be presented following Cadder", 26<sup>th</sup> October 2010 ([www.journalonline.co.uk/News/1008842.aspx](http://www.journalonline.co.uk/News/1008842.aspx)).

<sup>31</sup> FTI believes AH's case illustrates the need for early access to legal advice in both jurisdictions in extradition cases. If FTI had not arranged for AH to be represented *pro bono* by a lawyer in Belgium, he would have lacked representation at important pre-trial hearings in Belgium and had no information about the Belgian prosecution case file.

police interview to the jury. Cadder was convicted on all charges against him.

On 26 October 2010, the UK Supreme Court decided that the prosecution's citing in evidence of the admissions which made while Cadder was being interviewed by the police without access to legal advice was incompatible with his right to a fair trial under Article 6(1) and 6(3)(c) of the ECHR in light of the *Salduz* judgment. Following the *Cadder* ruling by the Supreme Court, the Scottish Parliament passed emergency legislation, the Criminal Procedure Act on 27 October 2010, which enshrines the right of access to a lawyer for anyone who is detained in Scotland.

Cadder's legal costs throughout this process were borne by legal aid and have been estimated as at least £30,000 (36,000€)<sup>29</sup>. The prosecution's costs falling directly on the state were likely to have been similar, if not greater, and there would have been further indirect costs, such as court and judges' time and delays caused to other proceedings.

More seriously, the police procedures that the Supreme Court ruled to be non-compliant with Article 6 ECHR applied to hundreds of other accused and convicted persons whose trial process would be affected or whose convictions would be liable to review and possible setting aside. Lord Hope in the introduction (paragraph 4) to his judgment stated that up to 76,000 cases may be affected by the Cadder decision. Although the Scottish Crown Office has contradicted this figure,<sup>30</sup> one of its spokesmen has confirmed there are 13 appeals before the Appeal Court which relate to a Cadder-related issue and 3,471 cases in which a Cadder-related issue has been raised.

### **5. European Arrest Warrant: Alan Hickey and Edmond Arapi**

AH, a lorry driver from London, is serving an 18 month prison sentence in France for people-trafficking. AH pleaded guilty to this offence after being told orally by the judge that if he did so, he would be free sooner, whereas if he pleaded not guilty, he would spend years in prison awaiting trial. Alan recently found out that Belgium has issued an EAW seeking his surrender from France to stand trial for people-trafficking “with aggravating circumstances” and as part of a criminal conspiracy.

AH was not given clear information about whom he was meant to have conspired with or when or where the conspiracy was meant to have taken place. Fair Trials International found a lawyer to act for AH in Belgium on a pro bono basis, to try and uncover this crucial information. Worryingly, AH's lawyer was only granted limited access to the case file: only two hours to read 17 boxes of prosecution documents.

AH believes the Belgian charges relate to the same matter for which he has already been sentenced in France. If he is right, his extradition from France to Belgium would be barred on the grounds of the right not to be tried or punished twice for the same criminal offence. AH could not raise this at his extradition hearing, however, as his lawyer's access to the Belgian prosecution file was too limited and he could not show that the Belgian charges concerned the same facts as those in his French trial. AH must now finish his sentence in France and then be surrendered to Belgium to face a further period on remand awaiting trial.<sup>31</sup>

Edmond Arapi was tried and convicted in his absence of killing Marcello Miguel Espana Castillo in Genoa, Italy in October 2004. He was given a sentence of 19 years, later reduced to 16 years on appeal. Edmond had no idea that he was wanted for a crime or that the trial even took place. In fact, Edmond hadn't left the UK at all between the years of 2000 to 2006. On 26 October 2004, the day that Marcello Miguel Espana Castillo was murdered in Genoa, Edmond was at work at Café Davide in Trentham, and attending classes to gain a chef's qualification.

Edmond was arrested in June 2009 at Gatwick Airport on a European Arrest Warrant from Italy, while he was on his way back from a family holiday in Albania. It was the first time he got knew of the charges against him in Italy, which does not automatically guarantee a re-trial for defendants tried in absentia. A British court ordered his extradition on 9 April 2010.

On 15 June 2010, the day his appeal of his extradition order was to be heard at the High Court, Italian authorities decided to withdraw the European Arrest Warrant, admitting that they had sought Edmond in error. They provided information indicating that Edmond's fingerprints did not match those at the crime scene.

Had Alan Hickney and Edmond Arapi had access to a lawyer in both issuing and executing States, delays and

misuse of the EAW system would have been avoided.

There are several dozens cases like Alan Hickney's and Edmond Arapi's every year across the EU.

### **3.4 Underlying cause of the problem: Existing legal standards appear not to offer sufficient protection to suspects and accused persons**

Currently, there is a considerable discrepancy between Member States' laws and practice leading to shortcomings in relation to suspects and accused persons' access to a lawyer and notification of custody.

#### *3.4.1 EU standards and the EU Charter of Fundamental Rights*

As things stand, there is no legislation at EU level on the right of suspects and accused persons to have access to a lawyer and to notification of custody. The Charter of Fundamental Rights (CFREU) sets out rights that are modelled on the ECHR. Art 47 of the Charter enshrines the right to fair trial and in particular the right to be "advised, defended and represented". Article 48 safeguards the presumption of innocence and guarantees the "respect for the rights of the defence". Article 4 prohibits ill-treatment and Article 7 guarantees respect for private and family life. While the Charter binds the institutions and bodies in all instances, Member States are the addressees of the Charter only when they are implementing Union law. This entails that, in the absence of relevant EU legislation in this field, Member States are not bound by Articles 47,48, 4 and 7 in the conduct of criminal proceedings. Conversely, individuals may not invoke these Charter provisions, either directly or indirectly, in order to challenge the infringement of their rights by domestic institutions.

#### *3.4.2 The limits of the procedural safeguards of Articles 3 and 6 ECHR*

Minimum rights and fair trial standards for all member States of the Council of Europe (including all of the EU Member States) are laid down in the ECHR. Stakeholders argue, persuasively, that the ECHR and its enforcement mechanism do not, in all cases, offer sufficient protection for the suspects and accused persons in general and guarantee the provision of adequate information on rights and charges in particular. There are three reasons for this:

##### *a) Right to access to a lawyer contained in the ECHR*

Art 6 of the ECHR lays down minimum procedural rights and standards for ensuring that criminal proceedings are fair. Art 6(3), in particular, stipulates that everyone charged with a criminal offence has the right "to have adequate time and facilities for the preparation of his defence" (Article 6.3 b) and the right "to defend himself in person or through legal assistance of his own choosing" (Article 6.3 c). Both these provisions have been interpreted by ECtHR in a way which has progressively extended the concrete rights an individual may derive from them, both in terms of material scope and temporal scope. *s.* However, there are a number of issues which remain to-date only partially regulated (because left to the Member States' margin of appreciation) or unclear. By way of example, ECHR case-law has so far not touched on the precise consequences of a violation of the right of access to a lawyer: the Court has systematically held that it is up to the national authorities to undo the adverse consequences of any such violation, by placing the person in the same position he would have found himself had the violation not occurred (although of course this is not possible

in practice if the person has served a sentence, or part of a sentence). This leaves scope for diverging implementation of a common standard. Besides, EAW proceedings fall entirely outside the ambit of Article 6 ECHR, so that persons subjected to EAW proceedings do not benefit from similar procedural safeguards as a matter of ECHR-law.

*b) Procedure for obtaining redress*

Someone whose rights have been violated by a country signatory to the ECHR may bring a case before the ECtHR once he has pursued all available avenues of appeal in the State concerned. Thus, the system of protection granted by the ECtHR is *ex-post* only. Ensuring justice in individual cases *ex-post* serves a different purpose from laying down generally applicable rules *ex-ante* and can never be said to be equivalent. Moreover, the enforcement system of the ECHR suffers from a huge backlog of cases awaiting disposal at the ECtHR<sup>32</sup>, so any remedy for the violation may come many years after. There are also practical difficulties in bringing a case, e.g. the requirement to pursue domestic appeals and the application to the ECtHR can be too expensive for some applicants in the absence of legal aid. As a consequence, many people whose rights have been violated never bring an action at the ECtHR. Furthermore, these rights may not be enforceable in accordance with certain Member States' legal traditions where the ECHR itself is not directly applicable, thus making recourse to the ECtHR the only possibility of obtaining a remedy for a violation.

In the light of these limitations to the current protection of the right to legal advice and notification of custody currently afforded by the ECHR and its enforcement mechanism, it becomes apparent that an EU measure addressing the problem would possess much added value, since a EU directive would be applicable (upon transposition by Member States and, to a certain extent, even despite the absence of timely transposition, under the doctrine of direct effect) before domestic courts and would take precedence, under the principle of primacy of EU law, over conflicting domestic provisions. Risks of violation of EU standards by national authorities would be diminished by the mechanism of reference for a preliminary ruling, which allows the ECJ to provide the domestic court with the correct interpretation of EU provisions, in the course of (and not after) national proceedings. .

*c) Application of ECtHR doctrine by national courts:*

Abstractly, one could assume that the existence of an ECtHR body of case-law which interprets the ECHR provisions may lead to progressive acceptance of those common standards by all Member States. However, reliance on decisions of the ECtHR (even when they constitute settled case-law, which may take years) at best promotes piecemeal and *ad hoc* pressure to reform national practice rather than a comprehensive and consistent development of EU-wide procedures to ensure compliance with fair trial rights.

Clearly, a consistent line of ECtHR case-law can lead some States whose procedures were found to be in breach of Article 6 to amend their law and procedures. Such development of Member States' law is well illustrated by the *Salduz* ruling, which, once confirmed by subsequent ECtHR judgment, has triggered seminal decisions by the Supreme Courts (and/or the Constitutional Court) of some EU Member States (France, the UK, and Belgium).<sup>33</sup>

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<sup>32</sup> 139, 650 cases pending as at December 2010.

<sup>33</sup> Following the *Cadder* ruling (see box above) by the Supreme Court, the Scottish Parliament passed emergency legislation, in the form of The Criminal Procedure (Legal Assistance, Detention and Appeals) (Scotland) Act on 27 October 2010 which enshrines the right of access to a lawyer for anyone who is detained in **Scotland**. The period permitted for detention without charge will also rise from 6 to 12 hours, with the potential to increase that to 24 hours on "cause shown" by a senior police officer.

However, this very example also demonstrates the inherent limits of the dialectics ECHR/Member States: the *Salduz* doctrine has been interpreted differently by different national courts and where courts and legislatures have attempted to bring procedures into line with the ECHR, they have done so in a piecemeal fashion that has been reactive rather than proactive.

### 3.5 The scope of the problem

#### 3.5.1 Access to a Lawyer

Member States currently do not collect data on the number of proceedings in which insufficient access to a lawyer is complained about or has led to judicial decisions being appealed and upheld or reversed by a higher court<sup>34</sup>. Nevertheless, recent case such as *Cadder* in Scotland and the controversy about pre-trial custody in France and in the Netherlands may help illustrate the potential scale and impact of these types of problem. Moreover, some useful indicators may be derived from reports and statistics of the European Court of Human Rights concerning article 6 § 3 c) (right to legal advice) as well as article 6 in general (right to a fair trial) of the Convention.

**The Netherlands:** approximately 360,000 persons are taken into custody every year. Of these, only juveniles, who are about 70,000, are entitled to the presence of a lawyer during questioning under Dutch law. The remaining **290,000** at present are not entitled to access to a lawyer during questioning<sup>35</sup>.

**France:** the number of *garde à vue* procedures, including traffic offenses, has increased significantly in recent years. In 2009, nearly **800,000** *garde à vue* procedures were implemented, up from 336,000 in 2001. Under the *garde à vue* procedure, which is currently being reformed in the French Parliament, the suspect does not have the benefit of legal assistance while undergoing questioning.

**Scotland:** according to figures mentioned in the *Cadder* ruling, there are about **76,000** cases - being held in the system pending the hearing on an appeal - which may be affected by the decision in this case.

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Another country whose national law in relation to Article 6 rights is being debated is **France**. On 25 January 2011, the National Assembly has adopted a bill to reform police custody “*garde à vue*” that ensures the presence of the lawyer for the entire duration of the procedure. The draft legislation now heads to the French Senate.

The *Salduz* doctrine has had recent reverberations in **Belgium**. Although the right to legal advice is contained in the national constitution, the suspect's ability to communicate with a lawyer under Art.20 (1) of the 1990 law on pre-trial custody only arises after the first police interview. Also the presence of a lawyer during police questioning and before the *juge d'instruction* is not assured although legislation which would allow the presence of a lawyer once the first interrogation has taken place is under consideration in the Belgian Chamber of Representatives. As recently as March 2009 the Belgian Cour de Cassation decided there was no legal requirement for the presence of a lawyer during the first interrogation of a suspect. A new pronouncement of December 2010, however, following contradictory jurisprudence from courts in Antwerp, eventually reached the opposite conclusion and applied the *Salduz* principle by rendering confession evidence deriving from interviews when lawyers had not been present inadmissible.

In the **Netherlands** there have been similar problems in reconciling national law and the *Salduz* doctrine. In essence the position until recently has been that there is no entitlement to consult a lawyer following arrest or during interview by the police and the suspect can only be represented by a lawyer after being taken before an investigating judge. However, in 2009 the Supreme Court held that juvenile suspects have a right to legal assistance in interview. An amendment of the procedural law in April 2010 gave suspects a right to a phone call to a lawyer upon arrest and allowed the suspect 30 minutes private consultation.

<sup>34</sup> However, were they to do so this would still not reveal the number of abuses of rights that occur. The annual country reports of the CPT show the inevitable gaps between theoretical safeguards and reality, even in those states whose criminal procedures appear on paper to be compliant with ECHR jurisprudence. To this extent the precise scope of the human rights problems concerning access to lawyers is a 'known unknown'.

<sup>35</sup> Information provided by the Dutch Ministry of Justice

Whilst the number of cases in which the ECtHR found a signatory state in breach of rights under Art 6 ECHR have increased steadily over the last decade (from 234 in 2003 to 482 in 2009<sup>36</sup>), this is not necessarily indicative of an increase in the number of instances where criminal proceedings in Member States may have fallen short of the standards of Art. 6 ECHR, let alone of the number of cases in which a suspect or accused person may not have been provided with adequate access to legal counselling.

The number of cases reaching the ECtHR are contingent on a variety of factors which do not all relate in proportion to the actual number of cases where violations of fair trial rights may have occurred. Factors such as the availability of legal aid to bring a case to the ECtHR can skew the proportionate relationship between the number of cases brought before the ECtHR and the actual number of cases where violations of fair trial rights occur but are not brought to the ECtHR.

In any event, the problem is not essentially one of numbers. A single well-publicised case is enough to impact judicial trust and cooperation. There is no evidence that such cases are becoming rarer, if anything ECtHR figures suggest the contrary. Certain stakeholders, and especially NGOs geared to the protection of fair trial rights, actually encourage defendants to bring their case to the ECtHR and in some cases offer legal advice to defendants who are deemed to have received an unfair trial.

Furthermore the fact that a significant number of Member States are currently, or have recently been, examining their procedures with respect to ensuring suspects' effective access to a lawyer shows there is widespread acknowledgement that procedural problems exist in the EU.

### **3.5.1 Notification of custody**

The most reliable and comprehensive source of data on the current position in Member States on notification of custody are the reports from the Committee for the Prevention of Torture (CPT) of their periodic visits to Council of Europe countries, including all EU Member States, to inspect places and conditions of detention. The CPT reports show that while almost all Member States (except CZ, in addition to BE, DE, PT, ES having limited rights for some types of detention- see table in Annex VIII) have some statutory right to have the fact of custody notified to a third party, usually a relative, employer and consular authority (and in 20 Member States this right is contained in the same statutory provision as access to a lawyer) in practice there are considerable shortcomings in the manner in which this right is provided for and in its application- The CPT made recommendations as to how the right of notification of custody needs to be improved in terms of ensuring the right is given to all detainees; when it is given; when it is withheld and at whose discretion and the reasons for same; and feedback to detainees .See also examples in box under 3.2.1

### **3.6 The baseline scenario: how would the problem evolve all things being equal?**

Mutual trust between Member States' judicial authorities is expected to remain at the current insufficient level as it is likely that instances of Member States' authorities failing to provide suspects or accused persons with adequate access to legal advice and notification of custody will continue to occur and be reported. While there is a trend among certain Member States to adopt

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<sup>36</sup> European Court of Human Rights, Annual Report from 2003 to 2009.

legislation in the view of bringing their judicial system in line with the ECHR's standards, there are no indications that this trend will lead to *all* Member States introducing similar obligations.

The best that could be expected without action on an EU level is that Member States would respond to particular developments in respect to the right of effective access to a lawyer in ECtHR jurisprudence and to CPT criticisms on notification of custody insofar as they directly or indirectly affected their own practices and procedures<sup>37</sup>. They might do this by way of either making changes to their criminal procedures or by national legislation. It is most unlikely that such reforms would result in any true universality of standards or that all Member States would proceed at the same pace. Furthermore it is probable that such reforms would be mainly reactive and *ad hoc*.

Without precise and binding obligations to ensure that suspects and accused persons have adequate access to qualified advice and to notification of custody from the earliest applicable stage of the proceedings, no further disincentives against Member States failing to provide adequate access to legal advice to suspects and accused persons and notification of custody to those detained would be created to ensure that those instances of failure to provide legal assistance or notification of custody would be prevented. The expected further increase in the caseload of the ECtHR would continue to limit the effectiveness of the ECHR in improving the provision of access to legal advice to suspects and accused persons in criminal proceedings across the EU.

Increased movement of citizens between Member States<sup>38</sup> and activities of individuals or businesses in one Member State having an effect in other Member States will lead to a greater need for judicial cooperation in criminal proceedings between Member States (e.g. evidence to be gathered in other Member States, financial penalties to be enforced and more individuals surrendered on the basis of an European Arrest Warrant). Between 2006 and 2009 the number of EAWs issued by Member States rose from 6,750 to 15,287 the number of persons surrendered from 1,890 to 4,431.<sup>39</sup> This rise in the number of EAWs is likely to continue over the coming years and will make the problem of insufficient levels of mutual trust considerably more acute.

The need to improve mutual trust will become even more pressing with the implementation and application of the raft of EU judicial cooperation measures envisaging the mutual recognition of judicial decisions in criminal proceedings such as those concerning the transfer between Member States of convicted persons serving custodial sentences.<sup>40</sup> It is particularly this latter instrument the application of which will make promotion of mutual trust between Member States' judicial authorities by strengthening fair trial rights at EU level essential. These measures which were adopted at EU level over the last few years have been improving the effectiveness of prosecutions and enforcement of sentences across the EU. Yet there is a consensus among politicians, practitioners and other stakeholder that the absence of measures at EU level to promote the rights of citizens as suspects in criminal proceedings in another Member State has created a sense of imbalance in EU justice policies.

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<sup>37</sup> Such development of Member State's law can be illustrated by the recent *Cadder* decision of the UK Supreme Court as well as recent debates and reforms in **France**, **Belgium** and the **Netherlands**.

<sup>38</sup> Eurostat data confirm that the percentage of foreigners in the overall population in the EU increased from 3.5% in 2000 to 6.1% in 2007:

[http://epp.eurostat.ec.europa.eu/portal/page?\\_pageid=1996,45323734&\\_dad=portal&\\_schema=PORTAL&screen=welcomeref&open=/t\\_popula/t\\_pop/t\\_demo\\_pop&language=en&product=REF\\_TB\\_population&root=REF\\_TB\\_population&scrollto=0](http://epp.eurostat.ec.europa.eu/portal/page?_pageid=1996,45323734&_dad=portal&_schema=PORTAL&screen=welcomeref&open=/t_popula/t_pop/t_demo_pop&language=en&product=REF_TB_population&root=REF_TB_population&scrollto=0)

<sup>39</sup> 11371/4/07 (no data from BE, DE, IT and SE), 10330/3/08 (no data from BE, BG and IT); 9734/2/09 (no data from BE, BG, DK, IT, MT, NL, AT, PT and UK); 7551/7/10 (no data from BG and IT). Based on previous years' experience, figure for 2010 will become available by September 2011 at the earliest.

<sup>40</sup> Framework Decision on the Transfer of Prisoners, implementation deadline 5 December 2011.

## 3.7 Does the EU have the power to act?

### 3.7.1 *The legal basis*

The EU's legislative competence for a Directive laying down minimum rights in criminal proceedings is set out in Art 82(2) (b) TFEU. Pursuant to this provision, minimum rules concerning the rights of individuals in criminal proceedings may be adopted by means of directives, to the extent necessary to facilitate mutual recognition of judgments and judicial decisions and police and judicial cooperation in criminal matters having a cross-border dimension. The necessity for legislative action at EU level is demonstrated by the problems currently encountered in Member States' courts in judicial cooperation litigation.

Art 82(2)(b) TFEU provides the legal basis for legislation applicable not only to cross-border criminal proceedings (i.e. proceedings with a link to another MS or a third country) but also to domestic cases as a precise, *ex ante* categorisation of criminal proceedings as cross-border or domestic is impossible in relation to a significant number of cases.

The future Directive will apply to all criminal proceedings irrespective of whether they present a cross-border element or not. The reason for this is that both the policy objectives as described below can only be met if minimum rules apply to all criminal proceedings. In order to improve mutual trust and thus judicial cooperation (cf. § 3.2.1 above), judicial authorities need to be aware that sufficiently high fair trial standards apply across the board in the jurisdictions of other Member States. If Member States were at liberty to apply lower standards to purely domestic proceedings, the requisite mutual trust between judicial authorities could not be boosted. As concerns the need to safeguard the fundamental rights of citizens (cf. § 3.2.2 above), the enactment of minimum rules for cross-border proceedings only, far from addressing the problem, would create two different classes of defendants in criminal proceedings, the ones with more rights than the others: this distinction, made on the basis of the cross-border nature of the procedure, would lead to unreasonable differentiation and would eventually be detrimental to the protection of fundamental rights. In addition, the CFREU guarantees rights to everyone suspected of a criminal offence, whether involved in cross border or purely national proceedings.

Additionally, it must be noted that the cross-border nature of any given proceedings is difficult to define and in any event may not be clear from the outset, when it must be decided which rules to apply: for instance, a purely domestic procedure may take on a cross-border dimension at a later stage, when the suspect flees to another country or when the need arises to gather relevant evidence in another Member State. Even after criminal proceedings have concluded with a final judgment imposing a sentence on the defendant by the courts of his Member State of nationality, such a case could still turn into a cross-border case necessitating judicial cooperation between Member States where the convicted person moves (or flees) to another Member State prior to having served his sentence in full. An EAW might thus have to be issued for achieving the return of that person (or the enforcement of a financial penalty sought by the court which had imposed the penalty).



### 3.7.2 *Subsidiarity: Why the EU is better placed to take action than Member States*

It is considered that there is a need for EU action based on the following factors:

1. The EU is establishing its own, unique system of judicial cooperation based on the principle of mutual recognition throughout the EU. Such a novel system calls for a guarantee of uniform standards of fundamental procedural rights protection in the EU. The problem has a cross-border dimension because if certain Member States do not respect the rights, this creates problems for other Member States. For example, if a judicial authority is requested to execute a court ruling from another Member State where standards are not adequate, it may either refuse to do so, or may request additional information which would result in delayed execution and consequently delayed justice.
2. The ECHR already sets European-wide fair trial standards (which, in relation to a number of rights, cannot always be considered sufficient in the scope of protection) but its enforcement mechanisms cannot guarantee a sufficient and consistent level of compliance by its signatory States, including EU Member States<sup>41</sup>. Similarly repeated censure by the CPT (which in some Member States has been repeated over the course of a number of visits) has not proved adequate to change the practice of Member States.
3. People can be involved in criminal proceedings outside their own Member State, and the needs of these suspects or accused persons need to be tackled at EU level.
  4. EU action will enable economies of scale to be achieved, for instance in relation to the development of training programmes, development and dissemination of information programmes, which could all be based on common EU rules, instead of largely differing national regulations.
5. New EU action, under the Lisbon Treaty, will enable effective implementation-monitoring and possible deficits of transposition to be rectified by means of infringement proceedings by the Commission. This is a further indication that the EU would be better placed to take action than individual Member States since if the EU takes legislative action, the full panoply of enforcement mechanisms (such as the duty to transpose a directive into legislation in the Member State; implementation monitoring by the Commission; the possibility of infringement proceedings before the ECJ against non-compliant Member States, references for preliminary rulings) would be available to make sure that there was compliance with the new right to information standards contained in EU legislation.

## **4. 4. OBJECTIVES**

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<sup>41</sup> Even recurring CPT reports issued to Member State governments calling on them to ensure that arrested suspects are provided at an early stage with access to legal advice have only led to a minority of Member States to adopt a system of notification by such means.

<b>Objectives:</b>	
<b>General:</b>	<ul style="list-style-type: none"> <li>▪ To improve judicial cooperation in the EU by enhancing mutual trust between Member States in the fair operation of the criminal justice systems by ensuring a high level of protection of fundamental rights in criminal proceedings</li> <li>▪ To ensure an adequate level of protection of fundamental rights in criminal proceedings for all individuals irrespective of their nationality; to contribute to fostering free movement of EU citizens throughout the EU; to promote EU values</li> </ul>
<b>Specific:</b>	<ul style="list-style-type: none"> <li>▪ To reduce costs of delays, refusals, appeals in the execution of request for judicial cooperation between Member States.</li> <li>▪ To ensure that suspected or accused persons have adequate access to a lawyer throughout criminal proceedings, so as to exercise all their defence rights effectively. To provide them with better and more effective enforcement mechanisms to assert their right to a lawyer.</li> <li>▪ To ensure that suspected or accused persons that are deprived of their liberty have the right to have the fact of this deprivation of liberty notified to a third party of their choice, thereby providing a more effective safeguard against ill-treatment of persons in custody and promoting the right to privacy and family life.</li> </ul>
<b>Operational:</b>	<p>Effective <b>access to a lawyer</b> should include the following elements:</p> <ul style="list-style-type: none"> <li>• it should be available from the early stages of criminal proceedings and remain available in all phases of the proceedings</li> <li>• it should encompass a well-specified range of activities by the lawyer</li> <li>• the right of access to a lawyer may be either not waivable or subject to waiver only with strong guarantees so as to avert any abuse</li> <li>• it should contain a general clause under which Member States shall ensure that the defendant has an effective remedy in instances where his right has been violated</li> <li>• it should be available to persons subjected to EAW proceedings both in the executing and in the issuing Member State</li> </ul> <p>Effective <b>notification of custody</b> should include the following elements:</p> <ul style="list-style-type: none"> <li>• It should be available as soon as possible upon the deprivation of liberty and should be made with at least one person named by the detainee</li> <li>• The detainee should receive feedback on the fact and outcome of the communication</li> <li>• A person who is a non-national should have the right to have the consular</li> </ul>

	authorities of his home state informed of the detention as soon as possible and to communicate with such authorities
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The present initiative forms part of a package of measures for improving mutual trust. Only once all the measures envisaged in the Roadmap are in place will it be possible to achieve the general objective. The following options are assessed against the specific and operational objectives above.

## 5. 5. POLICY OPTIONS AND THEIR IMPACT

The options for addressing the problem as defined in part 3 of this Impact Assessment, in line with the objectives as established in part 4, are set out below.

In accordance with Communication from the Commission on the Strategy for the effective implementation of the Charter of Fundamental Rights by the European Union<sup>42</sup>, this impact assessment examines the impact on the Fundamental Rights of the options proposed, in particular in the light of the 'fundamental rights check list' presented in the Communication.

For all the policy options, reference is made to suspects and accused persons as the category of persons who would be affected by these options. The phrase "suspects and accused persons" – consistently used in EU policy documents and previous legislation in this area - encompasses all people who are involved in criminal proceedings, against whom a suspicion that they have committed a criminal offence exists, irrespective of the terms used in domestic law. The breadth of the phrase is such that it does not require a definition, which would be very complex and difficult to square with national definitions. In accordance with the principle of proportionality of EU action, no rules should be made when no need for them can be shown. In the present case, the absence of such a definition is unlikely to compromise the attainment of the objectives of the proposal.

In any event, the jurisprudence of the ECHR provides that any person whose position is affected by a criminal procedure has to be treated as a suspect and enjoy all the rights attached to this status.

### 5.1 Overview of policy options

We have considered four options: retention of the *status quo* (option 1), a soft law option (option 2) and two legislative policy options (options 3 and 4). The retention of the *status quo* would involve taking no action at EU level, while the other three alternative policy options will improve, to a different extent, the protection of the right to a lawyer and notification of custody for suspects and accused persons across Europe.

- **Policy option 1:** Retention of the status quo. This option would involve taking no action at EU level.
- **Policy option 2:** Recommendation on good practice on suspects' and accused persons' right to access to a lawyer and notification of custody

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<sup>42</sup> [http://ec.europa.eu/justice/news/intro/doc/com\\_2010\\_573\\_4\\_en.pdf](http://ec.europa.eu/justice/news/intro/doc/com_2010_573_4_en.pdf)

- **Policy option 3:** Directive setting minimum rules applying the ECtHR *acquis*, on access to a lawyer (i.e. the Convention and the case law of the European Court on Human Rights) and CPT recommendations on notification of custody and reinforcing the application of mutual recognition instruments.
- **Policy option 4:** Directive applying the CPT recommendations on notification of custody and setting further approximating rules going beyond the ECtHR *acquis on access to a lawyer* and reinforcing the application of mutual recognition instruments.

Policy options 3 and 4 which are based on legislation have been assessed against the five parameters described under § 3.3. .

## 5.2 Discarded options

In relation to both non-legislative and legislative options, limiting the scope of the options or measures to criminal proceedings of a cross-border nature has been discarded as largely unworkable in practice.

## 5.3 Description and impact analysis of policy options

There are currently no data on the overall number of criminal proceedings in which suspects and defendants are or are not provided with adequate access to legal advice or notification of custody. Options are therefore assessed on the basis of effectiveness in achieving the specific and operational objectives in largely qualitative terms using input from stakeholders, and in terms of potential cost savings and efficiency gains of criminal proceedings.

The specific issue of juvenile and other vulnerable suspects and accused persons receiving adequate information in relation to their circumstances will not be covered by the options presented but will be the subject of a separate measure. Legal persons will be covered inasmuch as they are subject to criminal sanctions, which depend on individual Member States. All policy options envisage equal treatment of EU and non-EU nationals; third-country nationals would receive the same protection as EU citizens in criminal proceedings throughout the EU.

All options are expected to have a positive impact on fundamental rights of suspects. The key fundamental rights concerned are: right to liberty and security, right not to be subject to ill-treatment, right to privacy and family life, right to an effective remedy and to a fair trial and presumption of innocence and right to defence.

### 5.3.1 Policy option 1: Retention of the status quo

No action would be taken at EU level.

Expected Impact	
Effectiveness in	As the ECHR and the ECtHR jurisprudence are not uniformly implemented by Member States, and criticism from the CPT often

<b>meeting objectives</b>	<p>does not result in action by Member States, the level of protection of suspects, resulting from the substantially diverging standards, remain inadequate at present, although it may improve in the long term as a result of progressive compliance with this jurisprudence by an increasing number of Member States. There is a trend amongst Member States to align with the recent pronouncements of the ECtHR by modifying the rules applicable to criminal procedure (e.g. the provisions in the Code of Criminal Procedure stipulating the suspect shall have access to a lawyer only after the police interrogation, or from the moment he is brought before a judge). However, there are no indications that all Member States will follow this trend. Additionally, the ECHR and its jurisprudence do not cover certain aspects of the issue which are pivotal to ensure fair trial, e.g. EAW proceedings.</p>
<b>Impact on fundamental rights</b>	<p>Under this option, access of suspects and accused to a lawyer and to notification of custody will continue to be protected at the Member States level in accordance with their constitutional and international obligations. The fundamental rights will continue to be protected in a different manner according to each national system. The Charter of Fundamental Rights will be applied only when EU law is involved, for example under the regime of the European Arrest Warrant.</p>
<b>Financial and economic impact</b>	<p>There are no immediate new financial burdens associated with this option. However, Member States who are currently not in compliance with the ECtHR jurisprudence will incur significant costs when carrying out reforms in order to extend the right of access to a lawyer to the initial stages of criminal proceedings. For example, the cost of providing a lawyer throughout the pre-trial stage of the proceedings was found to be € 210 million for England &amp; Wales, a jurisdiction fully compliant with the ECHR requirements (cf. further details in the table in Annex VI). This cost may represent the total expense incurred by a large Member State who does not provide for any access to a lawyer in the pre-trial stage, a situation which is purely hypothetical as all Member States provide for some access to a lawyer in the pre-trial stage. The actual cost of bringing domestic legislation into line with the ECHR jurisprudence is therefore a proportion of this figure: an indication of the <i>actual</i> cost for a <i>medium-sized</i> Member States (both in terms of population and of number of criminal cases) could be the estimate provided by the Dutch Government, € 52 million.</p> <p>This option will not lead to a reduction in the costs to Member States' law enforcement budget and costs to individual suspects or accused persons incurred by appeals, aborted prosecutions and protracted judicial cooperation litigation in Member States where suspects have not been provided with adequate legal advice at a decisive stage of criminal proceedings. Given the increase in applications to the ECtHR, costs for Member States linked with damages awarded to individuals are likely to augment.</p>
<b>Impact on domestic justice</b>	<p>Domestic justice systems may naturally evolve towards more convergence in the light of ECtHR jurisprudence and CPT reports but</p>

<b>systems</b>	there is no guarantee that this will happen in the short to medium term. In fact, the need to implement certain ECtHR rulings may even augment the existing divergence, as there are indications that Member States interpret ECtHR pronouncements in different ways. The following Member States do not currently comply with the ECtHR Salduz jurisprudence: Belgium, the Netherlands, France, UK (Scotland only), Portugal, Luxembourg, Austria, Malta, Ireland. All Member States except four (France, Ireland, Malta, United Kingdom- see table in Annex VIII) have received recommendations from the CPT to address the current shortcomings in the manner in which the right of notification of custody is provided.
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5.3.2 Policy option 2: Recommendation on good practice in relation to suspects' and accused persons' right to a lawyer

**Description:** A non-binding Recommendation for Member States to improve the provision of access to legal advice and notification of custody. The Recommendation would identify current good practice in those Member States that already adhere to ECHR and CPT standards as regards provision of legal advice (see Annexe III) and notification of custody respectively. The Recommendation would envisage the commissioning by the European Commission of a study on the effect of the Recommendation three years after its adoption. Given the non-binding nature of a Recommendation, it would not contain any reporting obligations on part of the Member States as concerns its implementation. Most non-government stakeholders did not consider non-legislative options on their own as capable of promoting achievement of the objectives identified in part 4.

<b>Expected Impact</b>	
<b>Effectiveness in meeting objectives</b>	It is not certain that the non-binding Recommendation would be implemented fully by all Member States, particularly those which do not currently comply with minimum ECtHR standards. Despite repeated and strongly-worded exhortations by the CPT to several Member States that the provision of legal advice and notification of custody is essential, especially to those suspects or accused persons in detention, not all Member States do so. It is uncertain whether a Recommendation would be more effective than the current robust system of CPT visits and reports, at least where arrested or detained suspects are concerned.
<b>Impact on fundamental rights</b>	The impact of this option and the enhancement of the right to a fair trial the right to defence of the suspect and accused, and safeguards against ill-treatment would depend on how Member States would implement an EU recommendation. In general, it is possible to state that option 2 is likely to ensure a higher positive impact on suspect's right to a fair trial, right to defence and right not to be ill-treated than option 1. However, consisting mainly of soft-law measures and giving the overall situation as regards the lack of possibilities to enforce those rights (see part 2.4), this positive impact remains limited.
<b>Financial and</b>	The financial or administrative burden resulting from this option depends

<b>economic impact</b>	on the level of Member States' implementation of all or some of the provisions contained in the Recommendation.
<b>Impact on domestic justice systems</b>	Given its non-binding nature, the Recommendation may not yield significant results on domestic justice systems. Legislative reforms will not be imposed when needed, but left to the good will of national legislatures. The Recommendation may help the judiciary to interpret domestic provisions in compliance with the ECHR, but it is unlikely that this effect would be any more significant than the effect of ECtHR rulings alone.

The following box provides a comparison of the substantial differences (highlighted in bold) between Policy Options 3 and 4 based on the five parameters.

<b>Policy Option 3</b>	<b>Policy Option 4</b>
<p><b>A Directive setting minimum rules applying the ECtHR <i>acquis</i> on access to a lawyer and CPT recommendations on notification of custody reinforcing the application of EU mutual recognition instruments :</b></p> <ul style="list-style-type: none"> <li><b>would ensure that access to a lawyer is granted upon the first police interrogation (or from deprivation of liberty) and throughout the proceedings;</b> would ensure that notification of custody is granted from deprivation of liberty</li> <li>would specify the content of right of access to a lawyer ; would provide for feedback to the detainee of the fact and outcome of the communication with their nominee</li> <li><b>would</b> provide that any waiver of the right of access to a lawyer be subject to the requirement that the person has received prior legal advice or has otherwise obtained full knowledge of the consequences of the waiver <i>and has the necessary capacities to understand these consequences</i>; The right to notification of custody is subject to the wishes of the detainee</li> <li>would contain a <b>general clause</b> under which Member States shall ensure that the defendant has an effective remedy in instances where his right of access to a lawyer has been violated (the prohibition to use evidence at trial would be one way to implement this</li> </ul>	<p><b>A Directive applying CPT recommendations on notification of custody and setting further approximating rules going beyond the ECtHR <i>acquis</i> on access to a lawyer and reinforcing mutual recognition instruments s:</b></p> <ul style="list-style-type: none"> <li><b>would ensure that access to a lawyer is granted ahead of any police questioning and throughout the proceedings;</b> would ensure that notification of custody is granted from deprivation of liberty</li> <li>would specify the content of right of access to a lawyer ; would provide for feedback to the detainee of the fact and outcome of the communication with their nominee</li> <li><b>would impose mandatory defence across the board,</b> by excluding any waiver of the right to a lawyer; The right to notification of custody is subject to the wishes of the detainee</li> <li>would lay down a prohibition to use at trial any evidence obtained in breach of the right to legal advice</li> </ul>

requirement) ;

- would apply to EAW proceedings, both in the issuing and in the executing Member State. and notification of custody is available to a person arrested for the execution of an EAW.
- would apply to EAW proceedings, both in the issuing and in the executing Member State and notification of custody is available to a person arrested for the execution of an EAW.

5.3.3 Policy Option 3: A Directive setting minimum rules applying the ECtHR *acquis on access to a lawyer and CPT recommendations on notification of custody* and reinforcing the application of mutual recognition instruments

**Description:** A Directive streamlining minimum standards of access to legal advice and notification of custody stemming from the Charter and the ECHR as interpreted by the European Court of Human Rights and the CPT. Below, we have analysed this option against the five parameters described under § 3.3.

### 1. Temporal scope<sup>43</sup>

Charter/ECHR *acquis* requirement for access to a lawyer: *From the first interrogation and anyway as soon as from deprivation of liberty*<sup>44</sup> CPT recommendation for notification of custody – *as soon as possible after the deprivation of liberty*

Option 3: The Directive could provide that access to a lawyer must be granted at the latest upon the first police interrogation (or from deprivation of liberty). The need for this measure is illustrated by the case of Panovits, see box under § 3.2.1 The Directive could provide that notification of custody must take place as soon as possible after the deprivation of liberty

### 2. Material scope

Charter/ECHR *acquis* requirement: *All intervention which pertain ("sont propres") to legal advice must be accessible for the suspect*<sup>45</sup>. CPT recommendation for notification of custody- *feedback to the detainee on the fact and outcome of the communication must be given.*

Option 3: The Directive could govern the precise content and different manifestations of the right in hand (e.g. spell out rules about the activities that the lawyer can carry out on behalf of his client, notably during the interrogation of the latter. These activities may include: intervene; ask questions; make remarks; consult with client in private; other competencies). The need for this measure is illustrated by the case of Kevin Keogh, see box under § 3.3. The Directive can provide that a detainee must be advised without delay of the fact and outcome of the communication.

### 3. Waiving the right to the lawyer

Charter/ECHR *acquis* requirement: *The right to self-representation is not absolute: Member States enjoy a wide margin of appreciation and may require compulsory appointment of a lawyer if the interests of justice so require. Minimum requirements for waivers of rights include full knowledge*

<sup>43</sup> For the purpose of this analysis, only the start date has been considered, as the end-date would not differ in the two legislative options.

<sup>44</sup> ECtHR 13 October 2009, *Dayanan v. Turkey*, no. 7377/03, § 31

<sup>45</sup> ECtHR 13 October 2009, *Dayanan v. Turkey*, no. 7377/03, § 32



of the consequences<sup>46</sup> and the necessary capacities to understand these consequences. CPT recommendation for notification of custody: *The right to have a third party notified of one's detention is subject to the wishes of the detainee.*

**Option 3:** The Directive could provide that any waiver of the right be subject to the requirement that the person has received prior legal advice or has otherwise obtained full knowledge of the consequences of the waiver (in order to ensure that he is not subject to undue pressures especially when in detention) and has the necessary capacities to understand these consequences. The need for this measure is illustrated by the case of Yeremenko, see box under § 3.3. The Directive can provide that a detainee has a right to have "at least one person named by him" or the consular or diplomatic authorities of his home state, notified of his detention.

#### 4. Consequences of violations

Charter/ECHR *acquis* requirement: *Adverse consequences resulting from violations of the right to legal advice must be undone by placing the person in the same position he would have found himself in, had the violation not occurred (in practice, need to provide for a retrial). Statements made by a suspect in the absence of his lawyer cannot be used as evidence in court.*<sup>47</sup>

**Option 3:** The Directive could contain a general clause under which Member States shall ensure that the defendant has an effective remedy in instances where his right has been violated (this would require Member States e.g. to provide for a prohibition to use at trial evidence obtained through a breach of the right to a lawyer). The need for this measure is illustrated by the case of Cadder, see box under § 3.3.

#### 5. EAW cases

Charter/ECHR *acquis* requirement: *As yet, no case-law on the right of the defence in the EAW cases (Article 6 of the Convention does not apply to extradition and surrender proceedings)*

EU *acquis*: Framework Decision 2002/584/EU of 13 June 2002 on the European arrest warrant and the surrender procedures between Member States. Article 11 paragraph 2 of this Framework Decision provides that any person arrested for the purpose of the execution of an EAW under shall have a right to be assisted by a legal counsel in accordance with domestic law. This provision therefore refers back to domestic legislation and as such does not guarantee that all persons subjected to an EAW will have access to a lawyer across the EU.

**Option 3:** The Directive could specify access to the lawyer in the issuing and executing MS, The need for this measure is illustrated by the case of Alan Hickney and Edmond Arapi, see box under § 3.3. The Directive could apply the right to notification of custody to all persons deprived of their liberty including those arrested for the execution of an EAW

Expected Impact	
<b>Effectiveness in meeting objectives</b>	<p>This option would have all the strengths of the legislative instrument set out above (binding nature, high enforceability). More in particular:</p> <p>1. <b>Temporal scope:</b> to provide access to a lawyer from the first police interrogation and notification of custody from deprivation of liberty</p>

<sup>46</sup> ECtHR 25 September 1992, *Croissant v. Germany*, no. 13611/88, § 27

<sup>47</sup> ECtHR, 27 November 2008, *Salduz v. Turkey*, no. 36391/02, § 58

	<p>will ensure that Member States comply with the ECtHR acquis and CPT recommendations, thereby allaying concern among judges called upon to execute requests of judicial cooperation. (see example in table under § 3.2.1)</p> <p>2. <b>Material scope:</b> specific regulation of the activity a counsel can carry out would ward off divergent implementation in Member States thereby strengthening judicial authorities' trust that suspects can avail of a lawyer who can effectively ensure their defence. Similarly the right to notification is reinforced by the obligation to provide feedback. The trust engendered by both measures is required to achieve the objective of a better functioning judicial cooperation. (see example in table under § 3.3)</p> <p>3. <b>Waiving the right to a lawyer:</b> the possibility of a waiver of the right to a lawyer, subject to minimum rules in the Directive and to varying national provisions implementing these rules, will represent a guarantee that suspects in other jurisdictions will always be granted the right to a lawyer, save where they have given up that right after seeing a counsel or having obtained thorough information about the consequences of their waiver. This is expected to have positive knock-on effects on judicial cooperation (e.g. some judges will find it easier to surrender a suspect under an EAW in the knowledge that that person will be given access to a lawyer, save if he chooses freely and without constraint not to avail of professional legal advice). (see example in table under § 3.3) The fact that whether notification takes place is subject to the wishes of the detainee promotes the right to privacy and addresses situations (such as refugees) where detainees may not want their home state to be advised of their detention</p> <p>4. <b>Consequences of violations:</b> to stipulate that Member States must set up legal remedies in case of violations of the right to a lawyer will boost trust among judicial authorities as they will be aware that internal remedies exist (and not just the possibility of an application to the ECtHR upon exhaustion of internal remedies) whenever a breach of the right to a lawyer has occurred. This will greatly contribute to improved judicial cooperation across EU.</p> <p>5. <b>EAW cases:</b> the requirement of a lawyer in the issuing and in the executing Member State would play a major role in improving the functioning of this instrument of judicial cooperation. It is expected that many fewer refusals to execute an EAW would occur if the competent judicial authority were reassured that the person subject to the warrant is assisted by a lawyer in both the jurisdictions concerned. Occurrences such as the execution of arrest warrants which later prove to have been wrongly issued are likely to be reduced. Confidence in the EAW system is improved by extending the right of notification of custody to persons arrested for the execution of an EAW.</p>
<p><b>Impact on fundamental</b></p>	<p>This option would be adequate to streamline the provisions of the Charter and of the ECHR as interpreted by the ECtHR.</p>

<p><b>rights</b></p>	<p>The <b>right to liberty and security</b> (article 6 EU Charter; article 5 ECHR) would be enhanced as the access to a lawyer would allow the suspect or accused to have access to legal advice and defend his rights more effectively at pre-trial stage.</p> <p><b>Right to an effective remedy and to a fair trial</b> (article 47 EU Charter; articles 6 and 13 ECHR) as well as <b>the presumption of innocence and right of defence</b> (article 48 EU Charter; article 6 ECHR) would be also strengthened as the right to a lawyer would enable the suspect to exercise all his other rights of the defence more effectively through the intervention of a counsel..</p> <p>The prohibition against ill-treatment (Article 4 EU Charter, article 3 ECHR) and the right to respect for private and family life (Article 7 EU Charter, Article 8 ECHR) would be enhanced as notification of custody is a safeguard against ill-treatment in custody and, subject to the wishes of the detainee, provides a mechanism for his family to be aware of his detention</p> <p><b>Rights of the child</b> could be negatively impacted as children might lack necessary emotional and intellectual capacities to understand the consequences of the right to waive the legal defence. Any legal measures should therefore contain the necessary safeguards.</p>
<p><b>Financial and economic impact</b></p>	<p>The financial impact on Member States in respect of access to a lawyer would be as the requirements of the Directive will not substantially exceed those of the ECHR jurisprudence, with which compliance must be ensured irrespective of any EU legislation. These costs have been calculated for France, Finland and Estonia at respectively € 300,000, € 4,100 and € 70,950. They could be considered to be representative, respectively, for a large Member State (France) and for a small Member State (Estonia, Finland). However, these figures should be taken with caution given the differences in the number of EAWs received even between Member States of comparable size and the differences in the proportion of cases where legal aid is granted (at present) (see table under § 6 for further details). Greater costs are likely to be incurred by those Member States which are less in compliance with the ECHR and the ECtHR case-law; however these costs are not created by this option as they stem from the requisite compliance with the ECHR. In addition, some reduction in Member States' expenditure for aborted prosecutions and appeals, both domestically (e.g. cost of retrials) and as a result of condemnations by the ECtHR must be also factored in.<sup>48</sup> There would be only very small additional costs for providing notification of custody, which will arise at the same time as access to, a lawyer in most cases and involve only the costs of the mode of communication used (most commonly telephone and will be cost neutral if e-mail or Skype is used) and a short amount of police</p>

<sup>48</sup> As indicated above (see p. 4) the "right to legal aid" will be dealt with within a later, separate proposal. Therefore, a detailed analysis of the relevant costs will be provided in the corresponding impact assessment.

	time.
<b>Impact on domestic justice systems</b>	This option would ensure that domestic justice systems are broadly brought in line with the precepts of the ECHR and the ECtHR jurisprudence, and the CPT recommendations for which some legislative reforms will be needed. All Member States, albeit to a varying extent, will need to alter their regulations and practices in order to transpose the Directive provisions. It can be said that the apportionment of the burden resulting from the implementation is rather equal across Member States, as all of them are already in compliance with some requirements and not with others, as the table in Annex III.

5.3.4 Policy Option 4: Directive applying CPT recommendations on notification of custody and setting further rules going beyond the ECHR *acquis* on access to a lawyer and reinforcing the application of mutual recognition instruments

**Description:** The present policy option would (while providing the same right of notification of custody) combine, for the five aspects described above under § 3.3, an even more ambitious approach to access to a lawyer by strengthening the rights enshrined in the Charter and in the ECHR as interpreted by the ECtHR. Under this option, the Directive would, in addition to what is described under Option 3, ensure that access to a lawyer is granted *ahead of* (instead of *upon*) any policy questioning; it would impose mandatory defence across the board, thereby making any waiver of the right to a lawyer impermissible; it would lay down a prohibition to use evidentiary material obtained in breach of the right to a lawyer. Therefore, only these three elements (aspects 1, 3 and 4 respectively) will be discussed below and the impacts in respect of notification of custody set out in Option 3 are not repeated below.

### 1. Temporal scope<sup>49</sup>

Charter/ECHR *acquis* requirement: *From the first interrogation and anyway as soon as from deprivation of liberty*<sup>50</sup>

Option 4: the Directive could provide that access to a lawyer must be granted ahead of the first police interrogation, which is a reality in at least three jurisdictions (Luxembourg, Malta, and Denmark).

### 3. Mandatory defence/waiver

Charter/ECHR *acquis* requirement: *The right to self-representation is not absolute: Member States enjoy a wide margin of appreciation and may require compulsory appointment of a lawyer if the interests of justice so require. Minimum requirements for waivers of rights include full knowledge of the consequences*<sup>51</sup>

<sup>49</sup> For the purpose of this analysis, only the start date has been considered, as the end-date would not differ in the two legislative options.

<sup>50</sup> ECtHR 13 October 2009, *Dayanan v. Turkey*, no. 7377/03, § 31

<sup>51</sup> ECtHR, 25 September 1992, *Croissant v. Germany*, no. 13611/88, § 27

Option 4: The Directive could impose mandatory defence across the board, excluding the possibility of a waiver of the right by the suspect or accused person. Mandatory defence across the board currently exists in one Member State, Italy, where the suspect or accused person may not choose, for any offence even minor, to waive his right to a lawyer.

#### 4. Consequences of violations

Charter/ECHR *acquis* requirement: *Adverse consequences resulting from violations of the right to legal advice must be undone by placing the person in the same position he would have found himself in, had the violation not occurred (in practice, need to provide for a retrial). Statements made by a suspect in the absence of his lawyer cannot be used as evidence in court.*<sup>52</sup>

Option 4: The Directive could oblige Member States to provide for intra-procedural remedies (the prohibition to use evidentiary material obtained in violation of the right to legal advice). Similar provisions exist in Portugal, Spain and Italy.

Expected Impact	
<b>Effectiveness in meeting objectives</b>	<p>This option would be the most effective in terms of achieving the specific objectives, but on account of its content it would place a very high burden on member States and individuals alike. On account of its legislative nature, a Directive would create an express and unambiguous obligation to ensure that suspects are provided with effective legal advice, which all Member States would have to implement. The choice of a more prescriptive content would yield results in terms of increased mutual trust among judicial authorities, which would translate into better functioning judicial cooperation. More in particular:</p> <ol style="list-style-type: none"> <li>1. <b>Temporal scope</b>: to provide access to a lawyer already before the first police interrogation would ensure that the suspect can prepare his defence ahead of the interrogation. This would reassure judges called upon to execute e.g. an EAW that the right of defence of the suspect will be adequately protected, irrespective of the jurisdiction where the proceedings take place.</li> <li>3. <b>Mandatory defence</b>: the requirement that a suspect must be always assisted by a lawyer would represent the single biggest trust-boosting measure for judicial authorities; they would be reassured that each and every suspect, in any EU jurisdiction, will obtain access to a lawyer in any individual case, as opposed to the possibility that abstract availability of a lawyer may not result in the suspect's having access to him because of the waiver option.</li> <li>4. <b>Consequences of violations</b>: to provide at EU level that evidence obtained in breach of the right to a lawyer may not be used in court would have a more perceptible impact on judicial cooperation than to</li> </ol>

<sup>52</sup> ECtHR, 27 November 2008, *Salduz v. Turkey*, no. 36391/02, § 58

	<p>leave this to Member States, as judicial authorities could trust that violations of the right to a lawyer may not lead to miscarriages of justice. Thus, refusal to execute requests for judicial cooperation based on this fear would be reduced. .</p>
<p><b>Impact on fundamental rights</b></p>	<p>This option would have a significant positive impact on the fundamental rights of suspects and accused in several respects.</p> <p>The <b>right to liberty and security</b> (article 6 EU Charter; article 5 ECHR) would be enhanced as the access to a lawyer would allow the suspect or accused to have access to legal advice and defend his rights at pre-trial stage.</p> <p><b>Right to an effective remedy and to a fair trial</b> (article 47 EU Charter; articles 6 and 13 ECHR) as well as <b>the presumption of innocence and right of defence</b> (article 48 EU Charter; article 6 ECHR) would be strengthened as the right to access to a lawyer already before any police questioning would enable the suspect to enforce all his fair trial rights more effectively. This would also allow him or her to understand the procedure better and to use legal remedies in order to appeal against the decisions made within the criminal proceedings. The right to effective remedy would be further strengthened by the introduction of intra-procedural remedies (the prohibition to use evidentiary material obtained in violation of the right to legal advice).</p>
<p><b>Financial and economic impact</b></p>	<p>The financial impact of this option on Member States can be estimated, for a large Member State, in the region of € 179 million and for a medium-sized Member State at about € 110 mln (see table in Annex VI for further details). However, these figures should be taken with caution given the wide disparities across Member States in the proportion of cases where legal aid is granted as well as in the level of legal fees charged by defence counsels.</p> <p>Even Member States which are already compliant with the most recent pronouncements of the ECtHR, however, would need to take measures to transpose requirements which are not directly linked with the ECtHR jurisprudence, in particular the prescription of mandatory defence. In sum, this option is likely to result in very high costs for Member States, especially on account of the requirement of mandatory defence which would translate in much bigger expenditure for legal aid than at present.</p> <p>Similarly as for Member States, potential costs for individuals will be significant, in particular as a result of the requirement of mandatory defence which will impose a lawyer even on defendant who are unwilling to remunerate one.</p>
<p><b>Impact on domestic justice</b></p>	<p>This option would yield the most significant results on domestic justice systems. Significant legislative reforms will need to be carried out to</p>

<b>systems</b>	comply with the requirements of the Directive. The judiciary would have all the necessary tools to uphold the right to legal advice to very high standards. Some Member States may have problems to accept some of the requirements posited by this option, such as mandatory defence across the board (e.g. France and Poland) or the prohibition to use evidence obtained in breach of the right to a lawyer at trial (e.g. Sweden).
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## 6. 6. COMPARISON OF POLICY OPTIONS

The table below sets out a comparison of the relative rating of the four policy options as described in part 5.3 against the specific and operational objectives as defined in part 4. The policy options are classified according to their potential to meet the objectives defined in part 4, with three checkmarks (✓✓✓) indicating highest relative potential. Ratings for expected effectiveness in achieving the objectives are given equal weight in the final sum.

Policy option 3 (EU Directive setting common minimum rules applying the ECtHR *acquis* on access to a lawyer and CPT recommendations on notification of custody and reinforcing the application of mutual recognition instruments) demonstrates the best combination of costs and effectiveness in meeting the objectives. **It is therefore the preferred option**

Objectives/costs	Policy option 1: Status quo	Policy option 2: Recommendation	Policy option 3: EU Directive setting common minimum rules applying the ECtHR <i>acquis</i> on access to lawyer and CPT recommendations on notification of custody and reinforcing the application of mutual recognition instruments	Policy option 4: EU Directive applying CPT recommendations on notification of custody and setting further rules and going beyond the ECtHR <i>acquis</i> on access to lawyer and reinforcing the application of mutual recognition instruments
Savings due to better judicial cooperation (eliminating delays, refusals, appeals, etc.)	0	✓	✓✓	✓✓[✓]
<b>Impact on fundamental rights</b>	Low	Low <sup>53</sup>	Medium to high	High

<sup>53</sup> Since a Recommendation is non binding, it is difficult to foresee the impact of such an instrument (even one containing very prescriptive norms) on fundamental rights, as this impact would depend on the extent to which any given Member State would implement the provisions of the Recommendation, which is very difficult to predict with any degree of precision.

<p><b>Financial and Economic impact</b> (see tables in Annexes V and VI for full explanation)</p>	<p>0<sup>54</sup></p>	<p>Variable, depending on the extent to which Member States would implement the provisions of the Recommendation</p>	<p><b>For Member States:</b></p> <p>The cost of providing access to a lawyer in EAW proceedings in the executing Member State is estimated at about € <b>300,000</b> for a large Member State and between € 4,100 and € 70,950 for a small Member State [subject to the caveats mentioned in the table in § 5.3.3 ].</p> <p><u>NB.</u> All other additional requirements imposed by the Directive in excess of Option 1 have been found to be cost-neutral. (see further analysis of all these data in the table under Annex V)</p>	<p><b>For Member States:</b></p> <p>The cost of this option as concerns the <u>start-date</u> would be as high as € <b>179 million</b> for a large Member State and about € <b>110 million</b> for a medium-sized Member State [subject to the caveats mentioned in the table in § 5.3.4]. .</p> <p>The cost of this option as regards the <u>end-date</u> would range between €<b>309 million</b> for a large Member State with a generous legal aid regime <b>and € 137,046</b> for a medium-sized member State with more restrictive access to legal aid.</p> <p>The cost of providing access to a lawyer in <u>EAW proceedings</u> in the executing Member State is estimated at about € <b>300,000</b> for a large Member State and <b>between €4,100 and €70,950</b> for a small Member State <u>NB.</u> All other additional requirements imposed by the Directive in excess of Option 1 have been found to be cost-neutral. (see further analysis of all these data in the table in Annex VI)</p>
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<sup>54</sup> As explained in § 5.3.1 above, however, this option will entail significant costs for Member States who are not compliant with the requirements of the ECHR.



	<b>For individuals:</b> none	<b>For individuals:</b> none	<b>For individuals:</b> about <b>1,500 €</b> per person subject to an EAW	<b>For individuals:</b> 1. Individuals subject to criminal proceedings: about <b>4,170 €</b> and <b>5,200 €</b> per suspect/accused person per case. 2. Individuals subject to EAW: about <b>1,500 €</b> per person subject to an EAW.
<b>Impact on domestic justice system</b>	0	Low to medium	Medium to high	High

Option 4 is evidently very effective in achieving all the general and specific objectives, while Option 3 is only marginally less effective. In terms of efficiency, however, the costs for the Member States associated with Option 4 (in the region of several hundreds of millions Euros) are incomparably bigger than those likely to be incurred as a result of Option 3 (€ 300,000 per Member State). Therefore, the different magnitude of costs does not appear to be offset by the marginal gain in terms of reaching the objectives. As concerns the financial impact on individuals, there is also a marked difference between options 3 and 4, with the latter costing up to several thousands of Euros per individual per criminal case.

## 7. THE PREFERRED OPTION

### 7.1 EU added value and proportionality of the preferred option

The preferred option would guarantee that all suspects and accused persons across the EU have a right to adequate and effective access to a lawyer. In addition all suspects and accused persons who are deprived of their liberty will have the right to have the fact of their custody notified to a third person. The presumption of innocence and the right not to be ill-treated are keystones of the human rights of all citizens and effective access to a lawyer and notification of custody are essential guarantors of this right by safeguarding the suspect from intimidation or coercion and from unintentional self-incrimination.

This embedding of the new rights in Member States' respective legal orders, the right of Member State courts to seek binding interpretation of the Directive provisions from the European Court of Justice and the Commission's power to launch infringement proceeding against Member States not implementing or misapplying the Directive would all create strong incentives for Member States to comply with their obligations arising from the Directive and contribute to making the right to legal advice and to notification of custody practical and effective. It is, moreover, appropriate to enshrine the right to access to a lawyer and notification of custody explicitly within the legal order of the EU, rather than rely on the ECHR and its case law. A provision for very limited derogations will address any possibility of the rights having an adverse effect on criminal investigations and combining both access to a lawyer and notification of custody in one Directive allows the very limited circumstances in which a derogation can apply to be the same for both rights.

The above can be expected to induce responsible authorities in Member States to focus keenly on observance of the requirements of the legislation and contribute to making the new right of access to lawyers and to notification of custody, which will take into account the all of the CPT recommendations that come within EU competence, more “practical and effective” than is currently the case, as is clear from:

- Member States’ uneven levels of compliance with ECtHR jurisprudence, including the *Salduz* doctrine (see footnote 24).
- The high ratio of ‘repetitive decisions’ by the ECtHR in relation to fair trial issues, suggesting that Member States are not reforming their national legislation after they are found to be in breach of Article 6.
- The findings in the CPT reports that **in practice**, both legal assistance rights and the right of notification of custody are routinely not observed in many Member States.

It is further apparent both that, as the Court itself has noted, the present caseload of the ECtHR is unsustainable; and that a Directive on the right to access to a lawyer would result in fewer applications to the ECtHR in this area.

In addition, the preferred option will reduce costs associated with individuals' application to the ECtHR. In order to get an idea of the magnitude of these savings, one can look at the average liquidated damages awarded by the ECtHR to a successful applicant, which range between € 3,000 and 9,000. This figure, if multiplied by the number of findings of breaches of Article 6 ECHR over the last seven years<sup>55</sup>, would result in an amount of **€ 4.23 million to € 12.69 million** spent by Member states over the next ten years.

The **preferred option**, comprising the five main aspects of these rights, as defined in problem definition (see section 3.2), are proportionate in relation to their effect as none of the alternative options display an equal level of efficient combination of limited costs and effectiveness in reaching the objectives identified in 4 above. Whilst the preferred option of legislative action is likely to require a number of Member States to introduce changes to their criminal procedure laws in order to implement the Directive, there does not appear to be another equally effective means of achieving the **general and specific policy objectives**.

As regards the **operational policy objectives**, the preferred option is also sensitive to the principles of proportionality. For example, on the intraprocedural remedies, detailed regulation establishing the exact consequences of breach of the right to access to a lawyer is rejected in favour of encouraging self-regulation by Member States, combined with a general requirement for them to take measures to ensure that the defendant has an effective remedy in instances where his rights have been violated. The preferred option takes on board all of the CPT recommendations (including feedback) in relation to notification of custody. In the case where the preferred option exceeds ECtHR jurisprudence<sup>56</sup>, this can be justified in light of:

- the clear enhancement of the suspect’s fundamental rights – and thus of mutual trust between Member States – resulting from better spelling out the activities that lawyers can carry out during questioning and hearings, and

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<sup>55</sup> Over the period 2003-2009, 990 findings of violation of Article 6 ECHR were linked, directly or indirectly, to the right of access to legal advice: cf. European Court of Human Rights, Annual Reports from 2003 to 2009.

<sup>56</sup> I.e. with regard to the material scope and to EAW proceedings.

- the likelihood that the ECtHR case law is in any event evolving in that direction.

## 7.2 Potential magnitude of economic and financial impact

Assessing the likely financial and economic impact of the preferred option and its various elements with a degree of quantitative precision has proved to be difficult.

This is largely due to the lack of detailed data relating to, inter alia:

- The cost (including infrastructure and legal aid) to Member States of providing access to a lawyer, in particular at the pre-trial stage – both in absolute terms and as a proportion of their overall expenditure on legal aid.
- The cost to Member States of breaches of Article 6 of the ECHR with regard to a suspect's or accused person's access to a lawyer, in terms of appeals, re-trials, aborted prosecutions et cetera.

This is equally due to the impossibility to estimate, with a sufficient degree of accuracy, the quantitative increment in terms of additional hours of legal advice that the implementation of the preferred option would entail as this will largely depend on case-by-case factors which cannot be realistically assessed in advance. There would be only very small additional costs for providing notification of custody, which will arise at the same time as access to, a lawyer in most cases and involve only the costs of the mode of communication used (most commonly telephone and would be cost-neutral if e-mail or Skype are used) and a short amount of police time.

Thus, model calculations for the costs of the preferred option provided below relied on extrapolations based on the limited data which has been possible to gather. Taking account of this, the financial impact on Member States and on individuals is expressed in costs ranges. Significant divergence between Member States in terms of the numbers obtained explains the wide ranges of estimated costs for individual Member States.

Member States' potential savings owing to a reduction in the number of appeals, condemnations by the ECtHR or delay in judicial cooperation proceedings cannot be estimated with any statistical precision due to lack of Member State data on costs per case. Only indicative qualitative expectations in non-numerical terms could, therefore, be provided based on stakeholders' judgement, including officials from Ministries of Justice, NGOs such as Fair Trial International and JUSTICE, and practitioners and Bar Associations responding to an *ad hoc* online survey.

Unlike for the two previous measures envisaged in the Roadmap (on translation and interpretation; on information on rights and information about the charges), which were costs-neutral for individuals, in this case the potential economic and financial impact in respect of access to a lawyer is expected to have repercussions on the latter as well. The table in Annex V provides full details of the methodology used for calculating the relevant costs (both for Member States and for private individuals and organisation) , for each parameter.

## 8. 8. TRANSPOSITION, MONITORING AND EVALUATION

The timeframe for transposition of the Directive by Member States will be two years from its entry into force. As the Directive, at least to a certain extent, mirrors existing ECHR obligations or obligations that already exist in some form in a number of Member States (26 Member States have

some form of statutory provision in the case of notification of custody) it is expected that a two-year deadline would provide Member States with sufficient time to effect necessary changes to their respective national laws and practice. The combination of right of access to a lawyer and notification of custody in one measure with the same implementation date will facilitate Member States as in 21 Member States; their statutory provisions on access to a lawyer and notification of custody are currently in the same piece of domestic legislation. In addition for many Member States, this will not be their first consideration of this issue as they can draw on responses many of them have already made to CPT recommendations on notification of custody. Judicial reforms recently carried out in some Member States with a view to aligning domestic legislation with the ECHR jurisprudence show that very substantial changes can be effected within even a shorter time-frame. For instance, France is at present in the process of finalising a major reform of access to a lawyer in the pre-trial stage which was prompted by a ruling of the Conseil Constitutionnel of 30 June 2010: as prescribed by this ruling, new rules will have to be in force by 1 July 2011, when the previous rules will cease to be applicable (as unconstitutional). France looks set to bring the new statute law into force by the deadline set by the constitutional body, effectively in less than a year since the reform was envisaged.

Potential risks to implementation in time will be identified in an Implementation Plan accompanying the proposal for the Directive which sets out relevant measures by the Commission aimed at countering these risks.

Providing for a robust monitoring and evaluation mechanism is crucial to ensure that the rights envisaged in the Directive are complied with in practice as well as in legislation. The Directive will stipulate that Member States' should report on the effective implementation of legislative or non-legislative measures based on the nature of the proposed changes. Data provided by Eurostat, Eurobarometer and the Council of Europe will enable the formation of a useful baseline for monitoring the situation. Besides quantitative data provided by Member States, other possible sources of qualitative information on legislative and practical compliance will be gathered from the Justice Forum, the CPT<sup>57</sup>, the ECtHR, the European Network of Councils for the Judiciary and national and European Bar Associations. The Fundamental Rights Agency could play a role in collecting data, carrying out studies and compiling reports on the rights covered in the Directive. Member States should be encouraged to collect relevant data to assist in this process as there is currently a lack of reliable empirical data.

The Commission envisages carrying out a specific empirical study with emphasis on data collection three to five years into the implementation of the proposal. In order to gain in-depth quantitative and qualitative insights into the effectiveness of the proposal, this study will analyse the following indicators:

1. number of refusals of requests for judicial cooperation;
2. number of domestic appeals related to lack of or insufficient access to a lawyer and duration thereof; and related to denial of notification of custody
3. number of applications to the ECtHR related to lack of or insufficient access to a lawyer or notification of custody;
4. number of requests for preliminary rulings to the ECJ from domestic courts and tribunals.

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57. At the experts meeting on 26-27 March 2009, the CPT offered to assist in monitoring and evaluating the implementation of procedural safeguards instruments in the context of CPT visits to Council of Europe Member States.

The data would enable the Commission to evaluate the actual compliance in Member States more robustly than using the means hitherto available. Once all Roadmap Measures are in place, it will be essential to evaluate each Measure in context as well as the efficiency of the Roadmap as a whole.

## ANNEXES

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**COUNCIL OF  
THE EUROPEAN UNION**

**Brussels, 24 November 2009**

**15434/09**

**DROIPEN 149  
COPEN 220**

**LEGISLATIVE ACTS AND OTHER INSTRUMENTS**

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Subject: **RESOLUTION OF THE COUNCIL on a Roadmap for strengthening  
procedural rights of suspected or accused persons in criminal proceedings**

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**Resolution of the Council**

**of**

**on a Roadmap for strengthening procedural rights of  
suspected or accused persons in criminal proceedings**

THE COUNCIL OF THE EUROPEAN UNION,

Whereas:

- (1) In the European Union, the Convention for the Protection of Human Rights and Fundamental Freedoms (the "Convention") constitutes the common basis for the protection of the rights of

suspected or accused persons in criminal proceedings, which for the purposes of this Resolution includes the pre-trial and trial stages.

- (2) Furthermore, the Convention, as interpreted by the European Court of Human Rights, is an important foundation for Member States to have trust in each other's criminal justice systems and to strengthen such trust. At the same time, there is room for further action on the part of the European Union to ensure full implementation and respect of Convention standards, and, where appropriate, to ensure consistent application of the applicable standards and to raise existing standards.
- (3) The European Union has successfully established an area of freedom of movement and residence, which citizens benefit from by increasingly travelling, studying and working in countries other than that of their residence. However, the removal of internal borders and the increasing exercise of the rights to freedom of movement and residence have, as an inevitable consequence, led to an increase in the number of people becoming involved in criminal proceedings in a Member State other than that of their residence. In those situations, the procedural rights of suspected or accused persons are particularly important in order to safeguard the right to a fair trial.
- (4) Indeed, whilst various measures have been taken at European Union level to guarantee a high level of safety for citizens, there is an equal need to address specific problems that can arise when a person is suspected or accused in criminal proceedings.
- (5) This calls for specific action on procedural rights, in order to ensure the fairness of the criminal proceedings. Such action, which can comprise legislation as well as other measures, will enhance citizens' confidence that the European Union and its Member States will protect and guarantee their rights.
- (6) The 1999 Tampere European Council concluded that, in the context of implementing the principle of mutual recognition, work should also be launched on those aspects of procedural law on which common minimum standards are considered necessary in order to facilitate the application of the principle of mutual recognition, respecting the fundamental legal principles of Member States (Conclusion 37).
- (7) Also, the 2004 Hague Programme states that further realisation of mutual recognition as the cornerstone of judicial cooperation implies the development of equivalent standards of procedural rights in criminal proceedings, based on studies of the existing level of safeguards in Member States and with due respect for their legal traditions (point III 3.3.1.).
- (8) Mutual recognition presupposes that the competent authorities of the Member States trust the criminal justice systems of the other Member States. For the purpose of enhancing mutual trust within the European Union, it is important that, complementary to the Convention, there exist European Union standards for the protection of procedural rights which are properly implemented and applied in the Member States.
- (9) Recent studies show that there is wide support among experts for European Union action on procedural rights, through legislation and other measures, and that there is a need for enhanced mutual trust between the judicial authorities in the Member States<sup>58</sup>. These sentiments are echoed by the European Parliament<sup>59</sup>. In its Communication for the Stockholm programme<sup>60</sup>, the European Commission observes that strengthening the rights of defence is vital in order to maintain mutual trust between the Member States and public confidence in the European Union.

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<sup>58</sup> See *inter alia* the "Analysis of the future of mutual recognition in criminal matters in the European Union", report of 20 November 2008 by the *Université Libre de Bruxelles*.

<sup>59</sup> See e.g. the "European Parliament recommendation of 7 May 2009 to the Council on development of an EU criminal justice area", 2009/2012(INI), point 1 a).

<sup>60</sup> "An area of freedom, security and justice serving the citizen", COM (2009) 262/4 (point 4.2.2.).



- (10) Discussions on procedural rights within the context of the European Union over the last few years have not led to any concrete results. However, a lot of progress has been made in the area of judicial and police cooperation on measures that facilitate prosecution. It is now time to take action to improve the balance between these measures and the protection of procedural rights of the individual. Efforts should be deployed to strengthen procedural guarantees and the respect of the rule of law in criminal proceedings, no matter where citizens decide to travel, study, work or live in the European Union.
- (11) Bearing in mind the importance and complexity of these issues, it seems appropriate to address them in a step-by-step approach, whilst ensuring overall consistency. By addressing future actions, one area at a time, focused attention can be paid to each individual measure, so as to enable problems to be identified and addressed in a way that will give added value to each measure.
- (12) In view of the non-exhaustive nature of the catalogue of measures laid down in the Annex to this Resolution, the Council should also consider the possibility of addressing the question of protection of procedural rights other than those listed in that catalogue.
- (13) Any new EU legislative acts in this field should be consistent with the minimum standards set out by the Convention, as interpreted by the European Court of Human Rights,

HEREBY ADOPTS THE FOLLOWING RESOLUTION:

1. Action should be taken at the level of the European Union in order to strengthen the rights of suspected or accused persons in criminal proceedings. Such action can comprise legislation as well as other measures.
2. The Council endorses the "Roadmap for strengthening procedural rights of suspected or accused persons in criminal proceedings" (hereinafter referred to as "the Roadmap"), set out in the Annex to this Resolution, as the basis for future action. The rights included in this Roadmap, which could be complemented by other rights, are considered to be fundamental procedural rights and action in respect of these rights should be given priority at this stage.
3. The Commission is invited to submit proposals regarding the measures set out in the Roadmap, and to consider presenting the Green Paper mentioned under point F.
4. The Council will examine all proposals presented in the context of the Roadmap and pledges to deal with them as matters of priority.
5. The Council will act in full cooperation with the European Parliament, in accordance with the applicable rules, and will duly collaborate with the Council of Europe

### **Roadmap for strengthening procedural rights of suspected or accused persons in criminal proceedings**

The order of the rights indicated in this Roadmap is indicative. It is emphasised that the explanations provided below merely serve to give an indication of the proposed action, and do not aim to regulate the precise scope and content of the measures concerned in advance.

#### Measure A: Translation and Interpretation

*Short explanation:*

The suspected or accused person must be able to understand what is happening and to make him/herself understood. A suspected or accused person who does not speak or understand the language that is used in the proceedings will need an interpreter and translation of essential procedural documents. Particular attention should also be paid to the needs of suspected or accused persons with hearing impediments.

Measure B: Information on Rights and Information about the Charges

*Short explanation:*

A person that is suspected or accused of a crime should get information on his/her basic rights orally or, where appropriate, in writing, e.g. by way of a Letter of Rights. Furthermore, that person should also receive information promptly about the nature and cause of the accusation against him or her. A person who has been charged should be entitled, at the appropriate time, to the information necessary for the preparation of his or her defence, it being understood that this should not prejudice the due course of the criminal proceedings.

Measure C: Legal Advice and Legal Aid

*Short explanation:*

The right to legal advice (through a legal counsel) for the suspected or accused person in criminal proceedings at the earliest appropriate stage of such proceedings is fundamental in order to safeguard the fairness of the proceedings; the right to legal aid should ensure effective access to the aforementioned right to legal advice.

Measure D: Communication with Relatives, Employers and Consular Authorities

*Short explanation:*

A suspected or accused person who is deprived of his or her liberty shall be promptly informed of the right to have at least one person, such as a relative or employer, informed of the deprivation of liberty, it being understood that this should not prejudice the due course of the criminal proceedings. In addition, a suspected or accused person who is deprived of his or her liberty in a State other than his or her own shall be informed of the right to have the competent consular authorities informed of the deprivation of liberty.

Measure E: Special Safeguards for Suspected or Accused Persons who are Vulnerable

*Short explanation:*

In order to safeguard the fairness of the proceedings, it is important that special attention is shown to suspected or accused persons who cannot understand or follow the content or the meaning of the proceedings, owing, for example, to their age, mental or physical condition.

Measure F: A Green Paper on Pre-Trial Detention

*Short explanation:*

The time that a person can spend in detention before being tried in court and during the court proceedings varies considerably between the Member States. Excessively long periods of pre-trial detention are detrimental for the individual, can prejudice the judicial cooperation between the Member States and do not represent the values for which the European Union stands. Appropriate measures in this context should be examined in a Green Paper.

ANNEX II:

**Country fiches in relation to access to a lawyer**

AUSTRIA			
TEMPORAL SCOPE	<i>Dies a quo</i> when the right to legal advice arises? <sup>61</sup>	At the first police interrogation	
		Some time before the police interrogation	
		In any event not later than the when the person is deprived of his liberty	
		Immediately upon arrest	Yes.
		Within x hours after arrest	
		At a later stage (e.g. at a given stage of the investigation or the proceedings)	
		Is it possible to limit the right to contact a lawyer after arrest? If so, in which cases?	Before taking the suspect to prison, contact with a lawyer may be monitored/limited where necessary in order to avoid any obstruction of the investigation or the evidence. (Section 59 para 1 Austrian Code of Civil Procedure (“CCP”))
	<i>Dies ad quem</i>	Access to legal advice applies all throughout the criminal proceedings, including the post-trial stage?	-
SCOPE <i>RATIONE MATERIAE</i>	Questioning <sup>62</sup>	Has the lawyer the right to be present throughout questioning? If so, which kind of questioning does this right cover? (questioning by the police, by the prosecutor, by the investigating judge, by other officials)	Yes. However, the right to call a lawyer may be waived whenever this appears to be necessary to avoid any risk to the investigation, or impairment of evidence. In this case, an audio or video recording shall be made where possible. This right covers police, prosecutors and judges.
		Can the lawyer and the client deliberate in private before questioning?	Yes. However, if the accused is detained because of a danger of conspiracy or collusion, the public prosecutor – before taking the accused to the court prison – may order the monitoring of his oral and written contact with the defence counsel (Section 59 para 2 CCP).

<sup>61</sup> T. Spronken, G. Vermeulen, D. de Vocht en L. van Puyenbroeck, *EU Procedural Rights in Criminal Proceedings*, Antwerp-Apeldoorn-Portland, Maklu, 2009, pp. 38-43

<sup>62</sup> T. Spronken, G. Vermeulen, D. de Vocht en L. van Puyenbroeck, *EU Procedural Rights in Criminal Proceedings*, Antwerp-Apeldoorn-Portland, Maklu, 2009, pp. 50-55

		Can the lawyer and the client deliberate in private during questioning?	Yes.
		What can the lawyer do during questioning? (e.g. intervene, ask questions or have the police ask a given question, make remarks, suggest how to answer the question posed, other competencies)	The lawyer can ask questions.
	<b>Consultation</b> <sup>63</sup>	Can the lawyer meet with his client in person? If so, can this right be limited? (e.g. consultation by phone, use of glass partition)	Yes.
		Is the confidentiality of consultation (either by phone or in person) guaranteed?	Yes – contact between an arrested suspect and his lawyer is not allowed to be monitored. However, before taking the suspect to the court prison, this contact may be monitored/restricted to the extent necessary whenever this appears appropriate in order to ensure that the collection of evidence and further police investigation are not jeopardised. (Every detained suspect must within 48 hours of arrest either be released from custody or be taken to the penal institution of that court.)
		Are there possibilities to supervise the oral (including telephone conversation) and/or the written communication between lawyer and suspect, notably after arrest? If so, in which cases and to what extent?	Yes – see above.
		Can the lawyer visit his client at the police station? If so, can this right be limited? (e.g. in time, frequency, permission needed)	Yes (right not limited in: time; frequency; or permission needed).
		Can the lawyer visit his client in prison? If so, can this right be limited? (e.g. in time, frequency, permission needed)	Yes. The lawyer needs a formal authentication (during the preliminary proceeding from the public prosecutor and during the trial proceeding from the presiding judge) to visit the suspect in prison. The lawyers must also respect prison opening hours.
	<b>MANDATORY</b>	Is the assistance by a lawyer mandatory in criminal proceedings	Yes. Assistance by lawyer is mandatory, inter alia, throughout the proceedings

<sup>63</sup> T. Spronken, G. Vermeulen, D. de Vocht en L. van Puyenbroeck, *EU Procedural Rights in Criminal Proceedings*, Antwerp-Apeldoorn-Portland, Maklu, 2009, pp. 42-49

<b>DEFENCE/WAIVER of the right<sup>64</sup></b>	(mandatory defence)? If so, in which cases? (e.g. for certain categories of offences, certain categories of defendant and/or certain procedural stages)	if and as long as the accused is detained in pre-trial detention or in custodial detention. Other relevant factors for mandatory defence include: the suspect's age and mental/physical capacity; deprivation of liberty of the suspect; factual complexity of the case; legal complexity of the case; severity of the sanction that can be imposed;
	Mandatory defence can be derogated or waived? If so, are there special guarantees for the exercise of the right to waiver? (e.g. to be recorded)	Yes
<b>CONSEQUENCES OF VIOLATIONS</b>	Is there any remedy that applies when access to legal assistance is delayed or denied? If so, which kind of remedy? (e.g. exclusion of evidence such as prohibition using the confession of a suspect made in absence of his lawyer, prohibition on conducting procedural actions and/or judicial review/re-trial)	According to Section 106 para 1 of the CCP, the suspect can file an objection against a violation of a personal right if a restriction by the authorities of his contact with a lawyer does not correspond with the law.
<b>COMPETENCES OF LAWYERS AND QUALITY CONTROL<sup>65</sup></b>	Apart from cases in which the lawyer is provided (partially) free of charge, has the suspect the right to a lawyer of his own choosing?	Yes.
	Is membership of the bar compulsory?	No. A defence counsel can be a person entitled to practice as a lawyer, or a person otherwise entitled by law to represent persons in criminal proceedings, or a person who has obtained the qualifications to teach criminal law and criminal procedural law at an Austrian university, once the suspect has authorized that person to act as his/her legal assistance.
	Are special qualifications and/or special training required to practice criminal law?	No (see above).
	Are there guarantees for the independence of defence lawyers (e.g. from the police)	-
	Is there any method of monitoring performance/assuring the quality of the work of defence lawyers and/or professional mechanisms used to deal with poor standards of performance (e.g. disciplinary mechanisms)?	Yes (supervision by the Austrian bar).
	Is the State obliged to provide the suspect with another lawyer if legal representation proves to be ineffective?	-

<sup>64</sup> T. Spronken, G. Vermeulen, D. de Vocht en L. van Puyenbroeck, *EU Procedural Rights in Criminal Proceedings*, Antwerp-Apeldoorn-Portland, Maklu, 2009, p. 78-79

<sup>65</sup> T. Spronken, G. Vermeulen, D. de Vocht en L. van Puyenbroeck, *EU Procedural Rights in Criminal Proceedings*, Antwerp-Apeldoorn-Portland, Maklu, 2009, pp. 74-77

<b>EUROPEAN ARREST WARRANT (EAW)<sup>66</sup></b>	Is there an obligation to provide legal advice when the suspect is the subject of a EAW, extradition request or other surrender proceedings?	Yes.
<b>FINANCIAL COST</b>	Is there any information on financial cost borne by the State to ensure the right to legal assistance (as a proportion of the overall legal aid budget)?	-

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<sup>66</sup> T. Spronken, G. Vermeulen, D. de Vocht en L. van Puyenbroeck, *EU Procedural Rights in Criminal Proceedings*, Antwerp-Apeldoorn-Portland, Maklu, 2009, p. 100-101



BELGIUM			
TEMPORAL SCOPE	<i>Dies a quo</i> when the right to legal advice arises? <sup>67</sup>	At the first police interrogation	
		Some time before the police interrogation	
		In any event not later than the when the person is deprived of his liberty	
		Immediately upon arrest	
		Within x hours after arrest	Yes – within 24 hours of arrest.
		At a later stage (e.g. at a given stage of the investigation or the proceedings)	
	Is it possible to limit the right to contact a lawyer after arrest? If so, in which cases?	No. The arrested person has to be heard by the investigating judge within 24 hours of the arrest and the right to contact a lawyer starts after this hearing	
	<i>Dies ad quem</i>	Access to legal advice applies all throughout the criminal proceedings, including the post-trial stage?	Yes.
SCOPE <i>RATIONE MATERIAE</i>	Questioning <sup>68</sup>	Has the lawyer the right to be present throughout questioning? If so, which kind of questioning does this right cover? (questioning by the police, by the prosecutor, by the investigating judge, by other officials)	No.
		Can the lawyer and the client deliberate in private before questioning?	No.
		Can the lawyer and the client deliberate in private during questioning?	Not applicable.

<sup>67</sup> T. Spronken, G. Vermeulen, D. de Vocht en L. van Puyenbroeck, *EU Procedural Rights in Criminal Proceedings*, Antwerp-Apeldoorn-Portland, Maklu, 2009, pp. 38-43

<sup>68</sup> T. Spronken, G. Vermeulen, D. de Vocht en L. van Puyenbroeck, *EU Procedural Rights in Criminal Proceedings*, Antwerp-Apeldoorn-Portland, Maklu, 2009, pp. 50-55

		What can the lawyer do during questioning? (e.g. intervene, ask questions or have the police ask a given question, make remarks, suggest how to answer the question posed, other competencies)	Not applicable.
	<b>Consultation</b> <sup>69</sup>	Can the lawyer meet with his client in person? If so, can this right be limited? (e.g. consultation by phone, use of glass partition)	The lawyer is not permitted to visit his client when held at the police station. However, he is allowed to visit his client at a later stage in the proceedings, i.e. when his client is held in prison. This right is not limited.
		Is the confidentiality of consultation (either by phone or in person) guaranteed?	No.
		Are there possibilities to supervise the oral (including telephone conversation) and/or the written communication between lawyer and suspect, notably after arrest? If so, in which cases and to what extent?	Yes: the investigating judge may order surveillance of conversations between lawyer and suspect under exceptional circumstances (e.g. the lawyers himself is suspected of a criminal offence) – Article 90 of the Code of Criminal Procedure.
		Can the lawyer visit his client at the police station? If so, can this right be limited? (e.g. in time, frequency, permission needed)	No.
		Can the lawyer visit his client in prison? If so, can this right be limited? (e.g. in time, frequency, permission needed)	Yes: this right is not limited.
<b>MANDATORY DEFENCE/WAIVER of the right</b> <sup>70</sup>		Is the assistance by a lawyer mandatory in criminal proceedings (mandatory defence)? If so, in which cases? (e.g. for certain categories of offences, certain categories of defendant and/or certain procedural stages)	There are cases of mandatory defence. Relevant circumstances/factors include: age and mental capacity of the suspect; and severity of the sanction that can be imposed.
		Mandatory defence can be derogated or waived? If so, are there special guarantees for the exercise of the right to waiver? (e.g. to be recorded)	Yes.
<b>CONSEQUENCES OF</b>		Is there any remedy that applies when access to legal assistance is delayed or denied? If so, which kind of remedy? (e.g. exclusion of evidence such as	Yes. There is legal remedy providing for an appeal before the labour court ( <i>tribunal du travail</i> ) where a request for legal assistance (partially

<sup>69</sup> T. Spronken, G. Vermeulen, D. de Vocht en L. van Puyenbroeck, *EU Procedural Rights in Criminal Proceedings*, Antwerp-Apeldoorn-Portland, Maklu, 2009, pp. 42-49

<sup>70</sup> T. Spronken, G. Vermeulen, D. de Vocht en L. van Puyenbroeck, *EU Procedural Rights in Criminal Proceedings*, Antwerp-Apeldoorn-Portland, Maklu, 2009, p. 78-79

<b>VIOLATIONS</b>	prohibition using the confession of a suspect made in absence of his lawyer, prohibition on conducting procedural actions and/or judicial review/re-trial)	free of charge) is denied  (Article 508/16 of Judicial Code).
<b>COMPETENCES OF LAWYERS AND QUALITY CONTROL<sup>71</sup></b>	Apart from cases in which the lawyer is provided (partially) free of charge, has the suspect the right to a lawyer of his own choosing?	Yes.
	Is membership of the bar compulsory?	Unknown. However, the list of lawyers who may provide legal assistance (partially) free of charge is drawn up by the bar (see below).
	Are special qualifications and/or special training required to practice criminal law?	To provide legal assistance (partially) free of charge, the lawyer has to be registered on the list of the lawyers who want to provide free legal aid (this list is drawn up by the bar). This list specifies the specialisation of the lawyers for which they have to justify or for which they have to follow some training.
	Are there guarantees for the independence of defence lawyers (e.g. from the police)	-
	Is there any method of monitoring performance/assuring the quality of the work of defence lawyers and/or professional mechanisms used to deal with poor standards of performance (e.g. disciplinary mechanisms)?	Yes: the performance of lawyers (at least those who provide legal assistance (partially) free of charge) is supervised by the Austrian bar.
	Is the State obliged to provide the suspect with another lawyer if legal representation proves to be ineffective?	-
<b>EUROPEAN ARREST WARRANT (EAW)<sup>72</sup></b>	Is there an obligation to provide legal advice when the suspect is the subject of a EAW, extradition request or other surrender proceedings?	Yes
<b>FINANCIAL COST</b>	Is there any information on financial cost borne by the State to ensure the right to legal assistance (as a proportion of the overall legal aid budget)?	-

<sup>71</sup> T. Spronken, G. Vermeulen, D. de Vocht en L. van Puyenbroeck, *EU Procedural Rights in Criminal Proceedings*, Antwerp-Apeldoorn-Portland, Maklu, 2009, pp. 74-77

<sup>72</sup> T. Spronken, G. Vermeulen, D. de Vocht en L. van Puyenbroeck, *EU Procedural Rights in Criminal Proceedings*, Antwerp-Apeldoorn-Portland, Maklu, 2009, p. 100-101



BULGARIA			
TEMPORAL SCOPE	<i>Dies a quo</i> when the right to legal advice arises? <sup>73</sup>	At the first police interrogation	
		Some time before the police interrogation	
		In any event not later than the when the person is deprived of his liberty	
		Immediately upon arrest	Yes
		Within x hours after arrest	
		At a later stage (e.g. at a given stage of the investigation or the proceedings)	
		Is it possible to limit the right to contact a lawyer after arrest? If so, in which cases?	No
	<i>Dies ad quem</i>	Access to legal advice applies all throughout the criminal proceedings, including the post-trial stage?	Yes
SCOPE RATIONE MATERIAE	Questioning <sup>74</sup>	Has the lawyer the right to be present throughout questioning? If so, which kind of questioning does this right cover? (questioning by the police, by the prosecutor, by the investigating judge, by other officials)	Yes. The defence counsel has the right to take part in all investigative actions involving the accused, including questioning from the police, prosecutor or investigating judge. (However, his failure to appear is not an obstacle to their occurrence.)
		Can the lawyer and the client deliberate in private before questioning?	Yes
		Can the lawyer and the client deliberate in	Yes

<sup>73</sup> T. Spronken, G. Vermeulen, D. de Vocht en L. van Puyenbroeck, *EU Procedural Rights in Criminal Proceedings*, Antwerp-Apeldoorn-Portland, Maklu, 2009, pp. 38-43

<sup>74</sup> T. Spronken, G. Vermeulen, D. de Vocht en L. van Puyenbroeck, *EU Procedural Rights in Criminal Proceedings*, Antwerp-Apeldoorn-Portland, Maklu, 2009, pp. 50-55

		private during questioning?	
		What can the lawyer do during questioning? (e.g. intervene, ask questions or have the police ask a given question, make remarks, suggest how to answer the question posed, other competencies)	The lawyer has wide scope to participate during the suspect's questioning, including: intervening; asking questions; and making remarks.
	<b>Consultation</b> <sup>75</sup>	Can the lawyer meet with his client in person? If so, can this right be limited? (e.g. consultation by phone, use of glass partition)	Yes – this right is not limited.
		Is the confidentiality of consultation (either by phone or in person) guaranteed?	Yes – consultations should be out of ear-shot and cannot be intercepted or recorded. However, the consultation may be observed.
		Are there possibilities to supervise the oral (including telephone conversation) and/or the written communication between lawyer and suspect, notably after arrest? If so, in which cases and to what extent?	No.
		Can the lawyer visit his client at the police station? If so, can this right be limited? (e.g. in time, frequency, permission needed)	Yes – this right is not limited.
Can the lawyer visit his client in prison? If so, can this right be limited? (e.g. in time, frequency, permission needed)		Yes – this right is not limited.	
<b>MANDATORY DEFENCE/WAIVER of the right</b> <sup>76</sup>	Is the assistance by a lawyer mandatory in criminal proceedings (mandatory defence)? If so, in which cases? (e.g. for certain categories of offences, certain categories of defendant and/or certain procedural stages)	Yes. Relevant circumstances/factors include: age and mental/physical capacity of the suspect; severity of the sanction that can be imposed; deprivation of liberty of the suspect; factual/legal complexity of the case; where the suspect does not speak Bulgarian; where the interests of the accused parties are contradictory and one of the parties has his/her own defence counsel; where the case is tried in the absence of the accused; and where the accused cannot afford to pay legal fees and wishes to have a defence counsel and the interests of justice	

<sup>75</sup> T. Spronken, G. Vermeulen, D. de Vocht en L. van Puyenbroeck, *EU Procedural Rights in Criminal Proceedings*, Antwerp-Apeldoorn-Portland, Maklu, 2009, pp. 42-49

<sup>76</sup> T. Spronken, G. Vermeulen, D. de Vocht en L. van Puyenbroeck, *EU Procedural Rights in Criminal Proceedings*, Antwerp-Apeldoorn-Portland, Maklu, 2009, p. 78-79

		so requires.
	Mandatory defence can be derogated or waived? If so, are there special guarantees for the exercise of the right to waiver? (e.g. to be recorded)	Yes – no special guarantees or formal/substantive conditions attaching to right of waiver.
<b>CONSEQUENCES OF VIOLATIONS</b>	Is there any remedy that applies when access to legal assistance is delayed or denied? If so, which kind of remedy? (e.g. exclusion of evidence such as prohibition using the confession of a suspect made in absence of his lawyer, prohibition on conducting procedural actions and/or judicial review/re-trial)	Yes: decrees of investigative bodies may be appealed before the prosecutor. Decrees of the prosecutor not subject to judicial review may be appealed before a prosecutor with a higher office, and his decree shall not be subject to further appeal (Article 200 of the Criminal Procedural Code).  The suspect has other rights where legal assistance is denied under Article 55 CPC including: to be informed of the relevant criminal offence of which he is accused; provide or refuse to provide explanations in relation to the charges against him; and to study the case, including information obtained through the use of special intelligence means.
<b>COMPETENCES OF LAWYERS AND QUALITY CONTROL</b> <sup>77</sup>	Apart from cases in which the lawyer is provided (partially) free of charge, has the suspect the right to a lawyer of his own choosing?	Yes
	Is membership of the bar compulsory?	Yes in respect of lawyers provided (partially) free of charge.
	Are special qualifications and/or special training required to practice criminal law?	-
	Are there guarantees for the independence of defence lawyers (e.g. from the police)	-
	Is there any method of monitoring performance/assuring the quality of the work of defence lawyers and/or professional mechanisms used to deal with poor standards of performance (e.g. disciplinary mechanisms)?	Yes. Lawyers provided (partially) free of charge are monitored by the government/legal aid board/bar.
	Is the State obliged to provide the suspect with another lawyer if legal representation proves to be ineffective?	-
<b>EUROPEAN ARREST</b>	Is there an obligation to provide legal advice when the suspect is the	Yes

<sup>77</sup> T. Spronken, G. Vermeulen, D. de Vocht en L. van Puyenbroeck, *EU Procedural Rights in Criminal Proceedings*, Antwerp-Apeldoorn-Portland, Maklu, 2009, pp. 74-77

<b>WARRANT (EAW)<sup>78</sup></b>	subject of a EAW, extradition request or other surrender proceedings?	
<b>FINANCIAL COST</b>	Is there any information on financial cost borne by the State to ensure the right to legal assistance (as a proportion of the overall legal aid budget)?	Pre-trial legal assistance in the range of 1,200 to 2,400 leva (612 to 1,224 euros) in 2009. This is from a total legal expenditure of approximately 9 million leva (5 million euros) a year. In other words, only 0.01% – 0.03% of total expenditure on legal aid is directed towards providing access to lawyers during the police detention phase.

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<sup>78</sup> T. Spronken, G. Vermeulen, D. de Vocht en L. van Puyenbroeck, *EU Procedural Rights in Criminal Proceedings*, Antwerp-Apeldoorn-Portland, Maklu, 2009, p. 100-101



CYPRUS			
TEMPORAL SCOPE	<i>Dies a quo</i> when the right to legal advice arises? <sup>79</sup>	At the first police interrogation	
		Some time before the police interrogation	
		In any event not later than the when the person is deprived of his liberty	
		Immediately upon arrest	Yes
		Within x hours after arrest	
		At a later stage (e.g. at a given stage of the investigation or the proceedings)	
		Is it possible to limit the right to contact a lawyer after arrest? If so, in which cases?	No
	<i>Dies ad quem</i>	Access to legal advice applies all throughout the criminal proceedings, including the post-trial stage?	Yes
SCOPE <i>RATIONE MATERIAE</i>	Questioning <sup>80</sup>	Has the lawyer the right to be present throughout questioning? If so, which kind of questioning does this right cover? (questioning by the police, by the prosecutor, by the investigating judge, by other officials)	Yes. This right covers questioning by the police, prosecutor, investigating judge or any other official.
		Can the lawyer and the client deliberate in private before questioning?	Yes
		Can the lawyer and the client deliberate in private during questioning?	Yes
		What can the lawyer do during questioning? (e.g. intervene, ask questions or have the police ask a given question, make	The lawyer may intervene/make remarks during the

<sup>79</sup> T. Spronken, G. Vermeulen, D. de Vocht en L. van Puyenbroeck, *EU Procedural Rights in Criminal Proceedings*, Antwerp-Apeldoorn-Portland, Maklu, 2009, pp. 38-43

<sup>80</sup> T. Spronken, G. Vermeulen, D. de Vocht en L. van Puyenbroeck, *EU Procedural Rights in Criminal Proceedings*, Antwerp-Apeldoorn-Portland, Maklu, 2009, pp. 50-55

		remarks, suggest how to answer the question posed, other competencies)	suspect's questioning.
	<b>Consultation</b> <sup>81</sup>	Can the lawyer meet with his client in person? If so, can this right be limited? (e.g. consultation by phone, use of glass partition)	Yes. This right is not limited.
		Is the confidentiality of consultation (either by phone or in person) guaranteed?	Yes
		Are there possibilities to supervise the oral (including telephone conversation) and/or the written communication between lawyer and suspect, notably after arrest? If so, in which cases and to what extent?	No
		Can the lawyer visit his client at the police station? If so, can this right be limited? (e.g. in time, frequency, permission needed)	Yes. The lawyer must obtain permission to visit, however the Director of the Police Station or other personnel at the Police Station must not hinder or restrain this right.
		Can the lawyer visit his client in prison? If so, can this right be limited? (e.g. in time, frequency, permission needed)	Yes, but the lawyer needs permission.
<b>MANDATORY DEFENCE/WAIVER of the right</b> <sup>82</sup>	Is the assistance by a lawyer mandatory in criminal proceedings (mandatory defence)? If so, in which cases? (e.g. for certain categories of offences, certain categories of defendant and/or certain procedural stages)		Yes. <i>“The Court may assign an advocate to defend the accused or the appellant, as the case may be, if the gravity, difficulty or other circumstances of the case make it desirable in the interests of justice”</i> , Article 54 of the Criminal Procedure.
	Mandatory defence can be derogated or waived? If so, are there special guarantees for the exercise of the right to waiver? (e.g. to be recorded)		Yes
<b>CONSEQUENCES OF VIOLATIONS</b>	Is there any remedy that applies when access to legal assistance is delayed or denied? If so, which kind of remedy? (e.g. exclusion of evidence such as prohibition using the confession of a suspect made in absence of his lawyer, prohibition on conducting procedural actions and/or judicial review/re-trial)		Yes. A right of appeal exists against a decision for not issuing a certificate for legal aid. This is on the basis of the basic procedural rule that all decisions of the courts are subject to appeal.

<sup>81</sup> T. Spronken, G. Vermeulen, D. de Vocht en L. van Puyenbroeck, *EU Procedural Rights in Criminal Proceedings*, Antwerp-Apeldoorn-Portland, Maklu, 2009, pp. 42-49

<sup>82</sup> T. Spronken, G. Vermeulen, D. de Vocht en L. van Puyenbroeck, *EU Procedural Rights in Criminal Proceedings*, Antwerp-Apeldoorn-Portland, Maklu, 2009, p. 78-79

<b>COMPETENCES OF LAWYERS AND QUALITY CONTROL<sup>83</sup></b>	Apart from cases in which the lawyer is provided (partially) free of charge, has the suspect the right to a lawyer of his own choosing?	Yes
	Is membership of the bar compulsory?	-
	Are special qualifications and/or special training required to practice criminal law?	No. However, a lawyer provided (partially) free of charge must be registered in the catalogue of the lawyers willing to offer their services for legal assistance.
	Are there guarantees for the independence of defence lawyers (e.g. from the police)	-
	Is there any method of monitoring performance/assuring the quality of the work of defence lawyers and/or professional mechanisms used to deal with poor standards of performance (e.g. disciplinary mechanisms)?	No
	Is the State obliged to provide the suspect with another lawyer if legal representation proves to be ineffective?	-
<b>EUROPEAN ARREST WARRANT (EAW)<sup>84</sup></b>	Is there an obligation to provide legal advice when the suspect is the subject of a EAW, extradition request or other surrender proceedings?	Yes
<b>FINANCIAL COST</b>	Is there any information on financial cost borne by the State to ensure the right to legal assistance (as a proportion of the overall legal aid budget)?	-

<sup>83</sup> T. Spronken, G. Vermeulen, D. de Vocht en L. van Puyenbroeck, *EU Procedural Rights in Criminal Proceedings*, Antwerp-Apeldoorn-Portland, Maklu, 2009, pp. 74-77

<sup>84</sup> T. Spronken, G. Vermeulen, D. de Vocht en L. van Puyenbroeck, *EU Procedural Rights in Criminal Proceedings*, Antwerp-Apeldoorn-Portland, Maklu, 2009, p. 100-101

CZECH REPUBLIC			
TEMPORAL SCOPE	<i>Dies a quo</i> when the right to legal advice arises? <sup>85</sup>	At the first police interrogation	
		Some time before the police interrogation	
		In any event not later than the when the person is deprived of his liberty	
		Immediately upon arrest	Yes
		Within x hours after arrest	
		At a later stage (e.g. at a given stage of the investigation or the proceedings)	
		Is it possible to limit the right to contact a lawyer after arrest? If so, in which cases?	No
	<i>Dies ad quem</i>	Access to legal advice applies all throughout the criminal proceedings, including the post-trial stage?	Yes
SCOPE <i>RATIONE MATERIAE</i>	Questioning <sup>86</sup>	Has the lawyer the right to be present throughout questioning? If so, which kind of questioning does this right cover? (questioning by the police, by the prosecutor, by the investigating judge, by other officials)	Yes. This right covers questioning by the police, prosecutor and investigating judge.
		Can the lawyer and the client deliberate in private before questioning?	Yes
		Can the lawyer and the client deliberate in private during questioning?	Yes

<sup>85</sup> T. Spronken, G. Vermeulen, D. de Vocht en L. van Puyenbroeck, *EU Procedural Rights in Criminal Proceedings*, Antwerp-Apeldoorn-Portland, Maklu, 2009, pp. 38-43

<sup>86</sup> T. Spronken, G. Vermeulen, D. de Vocht en L. van Puyenbroeck, *EU Procedural Rights in Criminal Proceedings*, Antwerp-Apeldoorn-Portland, Maklu, 2009, pp. 50-55

		What can the lawyer do during questioning? (e.g. intervene, ask questions or have the police ask a given question, make remarks, suggest how to answer the question posed, other competencies)	The lawyer has wide scope to participate during the suspect's questioning, including: intervening; asking questions; and making remarks.
	<b>Consultation</b> <sup>87</sup>	Can the lawyer meet with his client in person? If so, can this right be limited? (e.g. consultation by phone, use of glass partition)	Yes – this right is not limited.
		Is the confidentiality of consultation (either by phone or in person) guaranteed?	Yes
		Are there possibilities to supervise the oral (including telephone conversation) and/or the written communication between lawyer and suspect, notably after arrest? If so, in which cases and to what extent?	No
		Can the lawyer visit his client at the police station? If so, can this right be limited? (e.g. in time, frequency, permission needed)	Yes – this right is not limited.
		Can the lawyer visit his client in prison? If so, can this right be limited? (e.g. in time, frequency, permission needed)	Yes – this right is not limited.
<b>MANDATORY DEFENCE/WAIVER of the right</b> <sup>88</sup>		Is the assistance by a lawyer mandatory in criminal proceedings (mandatory defence)? If so, in which cases? (e.g. for certain categories of offences, certain categories of defendant and/or certain procedural stages)	Yes. Relevant circumstances/factors include: age and mental/physical capacity of the suspect; severity of the sanction that can be imposed; deprivation of liberty of the suspect. Other grounds in Section 36, Code of Criminal Procedure include: if the accused is put in an observation ward in hospital; if it is deemed necessary by the court or by the public prosecutor in the pre-trial proceedings.
		Mandatory defence can be derogated or waived? If so, are there special guarantees for the exercise of the right to waiver? (e.g. to be recorded)	Yes

<sup>87</sup> T. Spronken, G. Vermeulen, D. de Vocht en L. van Puyenbroeck, *EU Procedural Rights in Criminal Proceedings*, Antwerp-Apeldoorn-Portland, Maklu, 2009, pp. 42-49

<sup>88</sup> T. Spronken, G. Vermeulen, D. de Vocht en L. van Puyenbroeck, *EU Procedural Rights in Criminal Proceedings*, Antwerp-Apeldoorn-Portland, Maklu, 2009, p. 78-79

<b>CONSEQUENCES OF VIOLATIONS</b>	Is there any remedy that applies when access to legal assistance is delayed or denied? If so, which kind of remedy? (e.g. exclusion of evidence such as prohibition using the confession of a suspect made in absence of his lawyer, prohibition on conducting procedural actions and/or judicial review/re-trial)	Yes – a complaint can be made.
<b>COMPETENCES OF LAWYERS AND QUALITY CONTROL</b> <sup>89</sup>	Apart from cases in which the lawyer is provided (partially) free of charge, has the suspect the right to a lawyer of his own choosing?	Yes
	Is membership of the bar compulsory?	-
	Are special qualifications and/or special training required to practice criminal law?	No
	Are there guarantees for the independence of defence lawyers (e.g. from the police)	-
	Is there any method of monitoring performance/assuring the quality of the work of defence lawyers and/or professional mechanisms used to deal with poor standards of performance (e.g. disciplinary mechanisms)?	Yes – lawyers provided (partially) free of charge are supervised by the bar.
	Is the State obliged to provide the suspect with another lawyer if legal representation proves to be ineffective?	-
<b>EUROPEAN ARREST WARRANT (EAW)</b> <sup>90</sup>	Is there an obligation to provide legal advice when the suspect is the subject of a EAW, extradition request or other surrender proceedings?	Yes
<b>FINANCIAL COST</b>	Is there any information on financial cost borne by the State to ensure the	-

<sup>89</sup> T. Spronken, G. Vermeulen, D. de Vocht en L. van Puyenbroeck, *EU Procedural Rights in Criminal Proceedings*, Antwerp-Apeldoorn-Portland, Maklu, 2009, pp. 74-77

<sup>90</sup> T. Spronken, G. Vermeulen, D. de Vocht en L. van Puyenbroeck, *EU Procedural Rights in Criminal Proceedings*, Antwerp-Apeldoorn-Portland, Maklu, 2009, p. 100-101

	right to legal assistance (as a proportion of the overall legal aid budget)?	
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DENMARK			
<b>TEMPORAL SCOPE</b>	<i>Dies a quo</i> when the right to legal advice arises? <sup>91</sup>	At the first police interrogation	
		Some time before the police interrogation	Yes (in most cases)
		In any event not later than the when the person is deprived of his liberty	
		Immediately upon arrest	
		Within x hours after arrest	
		At a later stage (e.g. at a given stage of the investigation or the proceedings)	
		Is it possible to limit the right to contact a lawyer after arrest? If so, in which cases?	No
	<i>Dies ad quem</i>	Access to legal advice applies all throughout the criminal proceedings, including the post-trial stage?	Yes
<b>SCOPE RATIONE MATERIAE</b>	<b>Questioning</b> <sup>92</sup>	Has the lawyer the right to be present throughout questioning? If so, which kind of questioning does this right cover? (questioning by the police, by the prosecutor, by the investigating judge, by other officials)	Yes – this right covers questioning by the police and prosecutor.
		Can the lawyer and the client deliberate in private before questioning?	Yes
		Can the lawyer and the client deliberate in private during questioning?	Yes
		What can the lawyer do during questioning? (e.g. intervene, ask questions or have the police ask a given	The lawyer has wide scope to participate during the suspect's questioning, including: intervening; asking

<sup>91</sup> T. Spronken, G. Vermeulen, D. de Vocht en L. van Puyenbroeck, *EU Procedural Rights in Criminal Proceedings*, Antwerp-Apeldoorn-Portland, Maklu, 2009, pp. 38-43

<sup>92</sup> T. Spronken, G. Vermeulen, D. de Vocht en L. van Puyenbroeck, *EU Procedural Rights in Criminal Proceedings*, Antwerp-Apeldoorn-Portland, Maklu, 2009, pp. 50-55



		question, make remarks, suggest how to answer the question posed, other competencies)	questions; and making remarks.
	<b>Consultation</b> <sup>93</sup>	Can the lawyer meet with his client in person? If so, can this right be limited? (e.g. consultation by phone, use of glass partition)	Yes. This right is not limited.
		Is the confidentiality of consultation (either by phone or in person) guaranteed?	Yes
		Are there possibilities to supervise the oral (including telephone conversation) and/or the written communication between lawyer and suspect, notably after arrest? If so, in which cases and to what extent?	No
		Can the lawyer visit his client at the police station? If so, can this right be limited? (e.g. in time, frequency, permission needed)	Yes. This right is not limited.
		Can the lawyer visit his client in prison? If so, can this right be limited? (e.g. in time, frequency, permission needed)	Yes. This right is not limited.
<b>MANDATORY DEFENCE/WAIVER of the right</b> <sup>94</sup>	Is the assistance by a lawyer mandatory in criminal proceedings (mandatory defence)? If so, in which cases? (e.g. for certain categories of offences, certain categories of defendant and/or certain procedural stages)		Yes. Grounds/factors for mandatory defence include: deprivation of liberty of the suspect; and the severity of the sentence that can be imposed. Other grounds are set out in Section 731 of the Administration of Justice Act (“AJA”).
	Mandatory defence can be derogated or waived? If so, are there special guarantees for the exercise of the right to waiver? (e.g. to be recorded)		Yes
<b>CONSEQUENCES OF VIOLATIONS</b>	Is there any remedy that applies when access to legal assistance is delayed or denied? If so, which kind of remedy? (e.g. exclusion of evidence such as prohibition using the confession of a suspect made in absence of his lawyer, prohibition on conducting procedural actions and/or judicial review/re-trial)		Yes – the court’s decision to deny legal assistance (partially) free of charge can be brought before an appeal court (however, only before the Supreme Court if a special permission from the Appeals Permission Board is

<sup>93</sup> T. Spronken, G. Vermeulen, D. de Vocht en L. van Puyenbroeck, *EU Procedural Rights in Criminal Proceedings*, Antwerp-Apeldoorn-Portland, Maklu, 2009, pp. 42-49

<sup>94</sup> T. Spronken, G. Vermeulen, D. de Vocht en L. van Puyenbroeck, *EU Procedural Rights in Criminal Proceedings*, Antwerp-Apeldoorn-Portland, Maklu, 2009, p. 78-79

		obtained).
<b>COMPETENCES OF LAWYERS AND QUALITY CONTROL</b> <sup>95</sup>	Apart from cases in which the lawyer is provided (partially) free of charge, has the suspect the right to a lawyer of his own choosing?	Yes
	Is membership of the bar compulsory?	Yes
	Are special qualifications and/or special training required to practice criminal law?	-
	Are there guarantees for the independence of defence lawyers (e.g. from the police)	-
	Is there any method of monitoring performance/assuring the quality of the work of defence lawyers and/or professional mechanisms used to deal with poor standards of performance (e.g. disciplinary mechanisms)?	Yes – lawyers provided (partially) free of charge are supervised by the bar and the government/legal aid board.
	Is the State obliged to provide the suspect with another lawyer if legal representation proves to be ineffective?	No. However, the court is entitled to dismiss a defence lawyer if there is a demonstrable risk that the lawyer hinders or prevents the smooth-running of the case.
<b>EUROPEAN ARREST WARRANT (EAW)</b> <sup>96</sup>	Is there an obligation to provide legal advice when the suspect is the subject of a EAW, extradition request or other surrender proceedings?	Yes
<b>FINANCIAL COST</b>	Is there any information on financial cost borne by the State to ensure the right to legal assistance (as a proportion of the overall legal aid budget)?	-

<sup>95</sup> T. Spronken, G. Vermeulen, D. de Vocht en L. van Puyenbroeck, *EU Procedural Rights in Criminal Proceedings*, Antwerp-Apeldoorn-Portland, Maklu, 2009, pp. 74-77

<sup>96</sup> T. Spronken, G. Vermeulen, D. de Vocht en L. van Puyenbroeck, *EU Procedural Rights in Criminal Proceedings*, Antwerp-Apeldoorn-Portland, Maklu, 2009, p. 100-101

**ENGLAND & WALES**

<b>TEMPORAL SCOPE</b>	<i>Dies a quo</i> when the right to legal advice arises? <sup>97</sup>	At the first police interrogation	
		Some time before the police interrogation	
		In any event not later than the when the person is deprived of his liberty	
		Immediately upon arrest	Yes
		Within x hours after arrest	
		At a later stage (e.g. at a given stage of the investigation or the proceedings)	
		Is it possible to limit the right to contact a lawyer after arrest? If so, in which cases?	Yes – where there are reasonable grounds for believing that the exercise of this right might harm evidence or other people; alert other suspects; or hinder the recovery of property (Section 58 and Code of Practice C, section 6 of the Police and Criminal Evidence Act 1984 (“PACE”)).
	<i>Dies ad quem</i>	Access to legal advice applies all throughout the criminal proceedings, including the post-trial stage?	Yes
<b>SCOPE RATIONE MATERIAE</b>	<b>Questioning</b> <sup>98</sup>	Has the lawyer the right to be present throughout questioning? If so, which kind of questioning does this right cover? (questioning by the police, by the prosecutor, by the investigating judge, by other officials)	Yes – this right covers questioning by police.
		Can the lawyer and the client deliberate in private before questioning?	Yes

<sup>97</sup> T. Spronken, G. Vermeulen, D. de Vocht en L. van Puyenbroeck, *EU Procedural Rights in Criminal Proceedings*, Antwerp-Apeldoorn-Portland, Maklu, 2009, pp. 38-43

<sup>98</sup> T. Spronken, G. Vermeulen, D. de Vocht en L. van Puyenbroeck, *EU Procedural Rights in Criminal Proceedings*, Antwerp-Apeldoorn-Portland, Maklu, 2009, pp. 50-55

		Can the lawyer and the client deliberate in private during questioning?	Yes
		What can the lawyer do during questioning? (e.g. intervene, ask questions or have the police ask a given question, make remarks, suggest how to answer the question posed, other competencies)	The lawyer has wide scope to participate during the suspect's questioning, including: intervening; asking questions; and making remarks.
	<b>Consultation</b> <sup>99</sup>	Can the lawyer meet with his client in person? If so, can this right be limited? (e.g. consultation by phone, use of glass partition)	Yes – this right is not limited.
		Is the confidentiality of consultation (either by phone or in person) guaranteed?	Yes (however see row below).
		Are there possibilities to supervise the oral (including telephone conversation) and/or the written communication between lawyer and suspect, notably after arrest? If so, in which cases and to what extent?	Yes – the suspect can give informed consent to the supervision of oral and written communications between him or herself and his or her lawyer. However, the right to communicate orally and in writing in private with a solicitor is fundamental.
		Can the lawyer visit his client at the police station? If so, can this right be limited? (e.g. in time, frequency, permission needed)	Yes – this right is not limited in principle.
Can the lawyer visit his client in prison? If so, can this right be limited? (e.g. in time, frequency, permission needed)		Yes, by arrangement. Prison authorities cannot refuse a lawyer access to his client.	
<b>MANDATORY DEFENCE/WAIVER of the right</b> <sup>100</sup>	Is the assistance by a lawyer mandatory in criminal proceedings (mandatory defence)? If so, in which cases? (e.g. for certain categories of offences, certain categories of defendant and/or certain procedural stages)	Yes. Grounds/factors for mandatory defence include: age and mental/physical capacity of the suspect; deprivation of liberty of the suspect; and the severity of the sentence that can be imposed. Other circumstances include vulnerable persons as identified in PACE and PACE Code of Practice C.	

<sup>99</sup> T. Spronken, G. Vermeulen, D. de Vocht en L. van Puyenbroeck, *EU Procedural Rights in Criminal Proceedings*, Antwerp-Apeldoorn-Portland, Maklu, 2009, pp. 42-49

<sup>100</sup> T. Spronken, G. Vermeulen, D. de Vocht en L. van Puyenbroeck, *EU Procedural Rights in Criminal Proceedings*, Antwerp-Apeldoorn-Portland, Maklu, 2009, p. 78-79

	Mandatory defence can be derogated or waived? If so, are there special guarantees for the exercise of the right to waiver? (e.g. to be recorded)	Yes
<b>CONSEQUENCES OF VIOLATIONS</b>	Is there any remedy that applies when access to legal assistance is delayed or denied? If so, which kind of remedy? (e.g. exclusion of evidence such as prohibition using the confession of a suspect made in absence of his lawyer, prohibition on conducting procedural actions and/or judicial review/re-trial)	No
<b>COMPETENCES OF LAWYERS AND QUALITY CONTROL</b> <sup>101</sup>	Apart from cases in which the lawyer is provided (partially) free of charge, has the suspect the right to a lawyer of his own choosing?	Yes
	Is membership of the bar compulsory?	Yes (solicitors must be admitted to the Roll of Solicitors of the Senior Courts of England and Wales).
	Are special qualifications and/or special training required to practice criminal law?	Yes. All solicitors and advocates are required to meet the professional standards set by the relevant professional body. In respect of solicitors, these are set by the Solicitors Regulation Authority (SRA). Duty Solicitors wishing to undertake duty solicitor work at the police station and magistrates' court must hold a Duty Solicitor Qualification awarded by the SRA). The Bar Standards Board regulates barristers called to the bar in England and Wales.
	Are there guarantees for the independence of defence lawyers (e.g. from the police)	-
	Is there any method of monitoring performance/assuring the quality of the work of defence lawyers and/or professional mechanisms used to deal with poor standards of performance (e.g. disciplinary mechanisms)?	Yes: supervision is provided by the Government/legal aid board and the bar. In addition, the Legal Services Commission (LSC) sets a number of requirements for solicitors' firms wishing to undertake criminal legal aid work under contract to the LSC.
	Is the State obliged to provide the suspect with another lawyer if legal representation proves to be ineffective?	-

<sup>101</sup> T. Spronken, G. Vermeulen, D. de Vocht en L. van Puyenbroeck, *EU Procedural Rights in Criminal Proceedings*, Antwerp-Apeldoorn-Portland, Maklu, 2009, pp. 74-77

<b>EUROPEAN ARREST WARRANT (EAW)<sup>102</sup></b>	Is there an obligation to provide legal advice when the suspect is the subject of a EAW, extradition request or other surrender proceedings?	Yes
<b>FINANCIAL COST</b>	Is there any information on financial cost borne by the State to ensure the right to legal assistance (as a proportion of the overall legal aid budget)?	Out of a total legal aid spend in England and Wales (i.e. covering civil and criminal expenditure) of £2,186 million in 2008/9, the most recent year for which figures are available, £192 million was spent on legal advice or representation at the police station.

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<sup>102</sup> T. Spronken, G. Vermeulen, D. de Vocht en L. van Puyenbroeck, *EU Procedural Rights in Criminal Proceedings*, Antwerp-Apeldoorn-Portland, Maklu, 2009, p. 100-101

ESTONIA			
<b>TEMPORAL SCOPE</b>	<i>Dies a quo</i> when the right to legal advice arises? <sup>103</sup>	At the first police interrogation	
		Some time before the police interrogation	
		In any event not later than the when the person is deprived of his liberty	
		Immediately upon arrest	Yes
		Within x hours after arrest	
		At a later stage (e.g. at a given stage of the investigation or the proceedings)	
		Is it possible to limit the right to contact a lawyer after arrest? If so, in which cases?	No
	<i>Dies ad quem</i>	Access to legal advice applies all throughout the criminal proceedings, including the post-trial stage?	Yes
<b>SCOPE RATIONE MATERIAE</b>	<b>Questioning</b> <sup>104</sup>	Has the lawyer the right to be present throughout questioning? If so, which kind of questioning does this right cover? (questioning by the police, by the prosecutor, by the investigating judge, by other officials)	Yes – this right covers questioning by the police, prosecutor and investigative judge.
		Can the lawyer and the client deliberate in private before questioning?	Yes
		Can the lawyer and the client deliberate in private during questioning?	Yes

<sup>103</sup> T. Spronken, G. Vermeulen, D. de Vocht en L. van Puyenbroeck, *EU Procedural Rights in Criminal Proceedings*, Antwerp-Apeldoorn-Portland, Maklu, 2009, pp. 38-43

<sup>104</sup> T. Spronken, G. Vermeulen, D. de Vocht en L. van Puyenbroeck, *EU Procedural Rights in Criminal Proceedings*, Antwerp-Apeldoorn-Portland, Maklu, 2009, pp. 50-55

		What can the lawyer do during questioning? (e.g. intervene, ask questions or have the police ask a given question, make remarks, suggest how to answer the question posed, other competencies)	The lawyer has wide scope to participate during the suspect's questioning, including: intervening; asking questions; and making remarks.
	<b>Consultation</b> <sup>105</sup>	Can the lawyer meet with his client in person? If so, can this right be limited? (e.g. consultation by phone, use of glass partition)	Yes – this right is not limited.
		Is the confidentiality of consultation (either by phone or in person) guaranteed?	Yes
		Are there possibilities to supervise the oral (including telephone conversation) and/or the written communication between lawyer and suspect, notably after arrest? If so, in which cases and to what extent?	No
		Can the lawyer visit his client at the police station? If so, can this right be limited? (e.g. in time, frequency, permission needed)	Yes – this right it not limited.
		Can the lawyer visit his client in prison? If so, can this right be limited? (e.g. in time, frequency, permission needed)	Yes – this right it not limited.
<b>MANDATORY DEFENCE/WAIVER of the right</b> <sup>106</sup>		Is the assistance by a lawyer mandatory in criminal proceedings (mandatory defence)? If so, in which cases? (e.g. for certain categories of offences, certain categories of defendant and/or certain procedural stages)	Yes – at the trial stage only. Grounds/factors for mandatory defence include: age and mental/physical capacity of the suspect; deprivation of liberty of the suspect; and the severity of the sentence that can be imposed. Other circumstances are set out in Article 45 of the Criminal Procedure Code (“CPC”) and include criminal proceedings that are conducted under the expedited procedure.
		Mandatory defence can be derogated or waived? If so, are there special guarantees for the exercise of the right to waiver? (e.g. to be recorded)	Yes – the right can be waived at the pre-trial stage. Usually written confirmation is required of the suspect/accused to confirm that he does not

<sup>105</sup> T. Spronken, G. Vermeulen, D. de Vocht en L. van Puyenbroeck, *EU Procedural Rights in Criminal Proceedings*, Antwerp-Apeldoorn-Portland, Maklu, 2009, pp. 42-49

<sup>106</sup> T. Spronken, G. Vermeulen, D. de Vocht en L. van Puyenbroeck, *EU Procedural Rights in Criminal Proceedings*, Antwerp-Apeldoorn-Portland, Maklu, 2009, p. 78-79



		wish for legal representation.
<b>CONSEQUENCES OF VIOLATIONS</b>	Is there any remedy that applies when access to legal assistance is delayed or denied? If so, which kind of remedy? (e.g. exclusion of evidence such as prohibition using the confession of a suspect made in absence of his lawyer, prohibition on conducting procedural actions and/or judicial review/re-trial)	No
<b>COMPETENCES OF LAWYERS AND QUALITY CONTROL</b> <sup>107</sup>	Apart from cases in which the lawyer is provided (partially) free of charge, has the suspect the right to a lawyer of his own choosing?	Yes
	Is membership of the bar compulsory?	Yes (in the case of a court-appointed lawyer, unless there are exceptional circumstances and the court agrees to the lawyer's suitability).
	Are special qualifications and/or special training required to practice criminal law?	Yes. To provide legal assistance (partially) free of charge, the lawyer must be: (1) an advocate or, with the permission of the body conducting the proceedings, any other person who meets the educational requirements established for contractual representatives by the CPC and whose competence in the criminal proceedings is based on an agreement with the person being defended ("contractual counsel"); or (2) an advocate whose competence in the criminal proceeding is based on an appointment by the body conducting the proceedings, Prosecutor's Office or court ("appointed counsel").
	Are there guarantees for the independence of defence lawyers (e.g. from the police)	The Bar Association nominates the (public) defence lawyer and therefore is responsible for guaranteeing his or her independence.
	Is there any method of monitoring performance/assuring the quality of the work of defence lawyers and/or professional mechanisms used to deal with poor standards of performance (e.g. disciplinary mechanisms)?	No
	Is the State obliged to provide the suspect with another lawyer if legal representation proves to be ineffective?	-

<sup>107</sup> T. Spronken, G. Vermeulen, D. de Vocht en L. van Puyenbroeck, *EU Procedural Rights in Criminal Proceedings*, Antwerp-Apeldoorn-Portland, Maklu, 2009, pp. 74-77

<b>EUROPEAN ARREST WARRANT (EAW)<sup>108</sup></b>	Is there an obligation to provide legal advice when the suspect is the subject of a EAW, extradition request or other surrender proceedings?	Yes
<b>FINANCIAL COST</b>	Is there any information on financial cost borne by the State to ensure the right to legal assistance (as a proportion of the overall legal aid budget)?	Spending on access to lawyers at the pre-trial phase was therefore 37% (14,332,956 EEK, or 919,029 euros) of total state expenditure on legal aid (38,284,758 EEK, or 2,454,818 euros) in 2009.

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<sup>108</sup> T. Spronken, G. Vermeulen, D. de Vocht en L. van Puyenbroeck, *EU Procedural Rights in Criminal Proceedings*, Antwerp-Apeldoorn-Portland, Maklu, 2009, p. 100-101

FINLAND			
TEMPORAL SCOPE	<i>Dies a quo</i> when the right to legal advice arises? <sup>109</sup>	At the first police interrogation	
		Some time before the police interrogation	
		In any event not later than the when the person is deprived of his liberty	
		Immediately upon arrest	Yes
		Within x hours after arrest	
		At a later stage (e.g. at a given stage of the investigation or the proceedings)	
		Is it possible to limit the right to contact a lawyer after arrest? If so, in which cases?	No
	<i>Dies ad quem</i>	Access to legal advice applies all throughout the criminal proceedings, including the post-trial stage?	Yes
SCOPE <i>RATIONE MATERIAE</i>	Questioning <sup>110</sup>	Has the lawyer the right to be present throughout questioning? If so, which kind of questioning does this right cover? (questioning by the police, by the prosecutor, by the investigating judge, by other officials)	Yes – this right covers questioning by the police and prosecutor.
		Can the lawyer and the client deliberate in private before questioning?	Yes
		Can the lawyer and the client deliberate in private during questioning?	Yes
		What can the lawyer do during questioning? (e.g.	The suspect's lawyer may ask questions during the suspect's police

<sup>109</sup> T. Spronken, G. Vermeulen, D. de Vocht en L. van Puyenbroeck, *EU Procedural Rights in Criminal Proceedings*, Antwerp-Apeldoorn-Portland, Maklu, 2009, pp. 38-43

<sup>110</sup> T. Spronken, G. Vermeulen, D. de Vocht en L. van Puyenbroeck, *EU Procedural Rights in Criminal Proceedings*, Antwerp-Apeldoorn-Portland, Maklu, 2009, pp. 50-55

		intervene, ask questions or have the police ask a given question, make remarks, suggest how to answer the question posed, other competencies)	interrogation.
	<b>Consultation</b> <sup>111</sup>	Can the lawyer meet with his client in person? If so, can this right be limited? (e.g. consultation by phone, use of glass partition)	Yes – this right is not limited.
		Is the confidentiality of consultation (either by phone or in person) guaranteed?	Yes
		Are there possibilities to supervise the oral (including telephone conversation) and/or the written communication between lawyer and suspect, notably after arrest? If so, in which cases and to what extent?	No
		Can the lawyer visit his client at the police station? If so, can this right be limited? (e.g. in time, frequency, permission needed)	Yes – this right is not limited.
		Can the lawyer visit his client in prison? If so, can this right be limited? (e.g. in time, frequency, permission needed)	Yes – this right is not limited.
<b>MANDATORY DEFENCE/WAIVER of the right</b> <sup>112</sup>	Is the assistance by a lawyer mandatory in criminal proceedings (mandatory defence)? If so, in which cases? (e.g. for certain categories of offences, certain categories of defendant and/or certain procedural stages)		Yes. Grounds/factors for mandatory defence include: age and mental capacity of the suspect; deprivation of liberty of the suspect; and the severity of the sentence that can be imposed. Other circumstances are if the existing defence counsel is incapable of defending the suspect, or if there is another special reason.
	Mandatory defence can be derogated or waived? If so, are there special guarantees for the exercise of the right to waiver? (e.g. to be recorded)		Yes
<b>CONSEQUENCES OF</b>	Is there any remedy that applies when access to legal assistance is delayed or		Yes – a rejected application can be submitted to the court for a

<sup>111</sup> T. Spronken, G. Vermeulen, D. de Vocht en L. van Puyenbroeck, *EU Procedural Rights in Criminal Proceedings*, Antwerp-Apeldoorn-Portland, Maklu, 2009, pp. 42-49

<sup>112</sup> T. Spronken, G. Vermeulen, D. de Vocht en L. van Puyenbroeck, *EU Procedural Rights in Criminal Proceedings*, Antwerp-Apeldoorn-Portland, Maklu, 2009, p. 78-79

<b>VIOLATIONS</b>	denied? If so, which kind of remedy? (e.g. exclusion of evidence such as prohibition using the confession of a suspect made in absence of his lawyer, prohibition on conducting procedural actions and/or judicial review/re-trial)	hearing (Section 24, Legal Aid Act).
<b>COMPETENCES OF LAWYERS AND QUALITY CONTROL</b> <sup>113</sup>	Apart from cases in which the lawyer is provided (partially) free of charge, has the suspect the right to a lawyer of his own choosing?	Yes
	Is membership of the bar compulsory?	No (see below)
	Are special qualifications and/or special training required to practice criminal law?	Legal aid can be given either by a public legal aid attorney working at the state legal aid office or a private attorney. A private attorney may be either an advocate (member of the Bar Association) or another lawyer.
	Are there guarantees for the independence of defence lawyers (e.g. from the police)	-
	Is there any method of monitoring performance/assuring the quality of the work of defence lawyers and/or professional mechanisms used to deal with poor standards of performance (e.g. disciplinary mechanisms)?	Yes – the activities of public legal aid attorneys and advocates are supervised by the Bar Association and the Chancellor of Justice. In addition, all attorneys are under the supervision of the court.
	Is the State obliged to provide the suspect with another lawyer if legal representation proves to be ineffective?	Yes – this is a ground for mandatory defence (see above).
<b>EUROPEAN ARREST WARRANT (EAW)</b> <sup>114</sup>	Is there an obligation to provide legal advice when the suspect is the subject of a EAW, extradition request or other surrender proceedings?	Yes
<b>FINANCIAL COST</b>	Is there any information on financial cost borne by the State to ensure the right to legal assistance (as a proportion of the overall legal aid budget)?	-

<sup>113</sup> T. Spronken, G. Vermeulen, D. de Vocht en L. van Puyenbroeck, *EU Procedural Rights in Criminal Proceedings*, Antwerp-Apeldoorn-Portland, Maklu, 2009, pp. 74-77

<sup>114</sup> T. Spronken, G. Vermeulen, D. de Vocht en L. van Puyenbroeck, *EU Procedural Rights in Criminal Proceedings*, Antwerp-Apeldoorn-Portland, Maklu, 2009, p. 100-101

FRANCE			
TEMPORAL SCOPE	<i>Dies a quo</i> when the right to legal advice arises? <sup>115</sup>	At the first police interrogation	
		Some time before the police interrogation	
		In any event not later than the when the person is deprived of his liberty	
		Immediately upon arrest	Yes
		Within x hours after arrest	
		At a later stage (e.g. at a given stage of the investigation or the proceedings)	
	Is it possible to limit the right to contact a lawyer after arrest? If so, in which cases?	Yes – the <i>garde à vue</i> procedure can be extended twice, each time for a period of 24 hours. The person whose detention is extended in this way may ask a lawyer after the forty-eighth hour and then the seventy-second hour of the measure and is advised of that right or when the extensions are notified. However, when the police investigation concerns an offense within the scope of the 3 ° and 11 ° of Article 706-73 of the Code of Penal Procedure (“CPP”), the interview with a lawyer can intervene only after the seventy-second hour.	
<i>Dies ad quem</i>	Access to legal advice applies all throughout the criminal proceedings, including the post-trial stage?	Yes	
SCOPE <i>RATIONE MATERIAE</i>	Questioning <sup>116</sup>	Has the lawyer the right to be present throughout questioning? If so, which kind of questioning does this right cover? (questioning by the police, by the prosecutor, by the investigating judge, by other officials)	Yes – this right covers questioning by the prosecutor and investigative judge. However, the lawyer does <b>not</b> have the right to be present throughout questioning by the police.
		Can the lawyer and the client deliberate in	Yes – but it is not a case of a “right” of the suspect to consult his lawyer, i.e. it

<sup>115</sup> T. Spronken, G. Vermeulen, D. de Vocht en L. van Puyenbroeck, *EU Procedural Rights in Criminal Proceedings*, Antwerp-Apeldoorn-Portland, Maklu, 2009, pp. 38-43

<sup>116</sup> T. Spronken, G. Vermeulen, D. de Vocht en L. van Puyenbroeck, *EU Procedural Rights in Criminal Proceedings*, Antwerp-Apeldoorn-Portland, Maklu, 2009, pp. 50-55

		private before questioning?	is not formalised in law. In the absence of the lawyer, the police may listen in on the suspect.
		Can the lawyer and the client deliberate in private during questioning?	Yes
		What can the lawyer do during questioning? (e.g. intervene, ask questions or have the police ask a given question, make remarks, suggest how to answer the question posed, other competencies)	The lawyer has wide scope to participate during the suspect's questioning, including inter alia: intervening; asking questions; and making remarks.
	<b>Consultation</b> <sup>117</sup>	Can the lawyer meet with his client in person? If so, can this right be limited? (e.g. consultation by phone, use of glass partition)	Yes – however the duration of the meeting is limited to 30 minutes.
		Is the confidentiality of consultation (either by phone or in person) guaranteed?	Yes (however there is no particular legal provision to guarantee this).
		Are there possibilities to supervise the oral (including telephone conversation) and/or the written communication between lawyer and suspect, notably after arrest? If so, in which cases and to what extent?	No
		Can the lawyer visit his client at the police station? If so, can this right be limited? (e.g. in time, frequency, permission needed)	Yes – however the duration of the meeting is limited to 30 minutes.
		Can the lawyer visit his client in prison? If so, can this right be limited? (e.g. in time, frequency, permission needed)	Yes – this right is not limited.
	<b>MANDATORY DEFENCE/WAIVER of the right</b> <sup>118</sup>	Is the assistance by a lawyer mandatory in criminal proceedings (mandatory defence)? If so, in which cases? (e.g. for certain categories of offences, certain categories of defendant and/or certain procedural stages)	Yes. Grounds/factors for mandatory defence include: age and mental capacity of the suspect; deprivation of liberty of the suspect; and the severity of the sentence that can be imposed.

<sup>117</sup> T. Spronken, G. Vermeulen, D. de Vocht en L. van Puyenbroeck, *EU Procedural Rights in Criminal Proceedings*, Antwerp-Apeldoorn-Portland, Maklu, 2009, pp. 42-49

	Mandatory defence can be derogated or waived? If so, are there special guarantees for the exercise of the right to waiver? (e.g. to be recorded)	Yes
<b>CONSEQUENCES OF VIOLATIONS</b>	Is there any remedy that applies when access to legal assistance is delayed or denied? If so, which kind of remedy? (e.g. exclusion of evidence such as prohibition using the confession of a suspect made in absence of his lawyer, prohibition on conducting procedural actions and/or judicial review/re-trial)	Yes – decisions of the legal aid office may be appealed, as appropriate, to the President of the Court of Appeal or the Court of Cassation; the Chairman of the Administrative Court of Appeal; the Chairman of the Litigation Division of the State Council; Vice-Chairman of the Industrial Disputes Tribunal; the President of the National Court of asylum or a member of the court to which the case has been assigned.
<b>COMPETENCES OF LAWYERS AND QUALITY CONTROL</b> <sup>119</sup>	Apart from cases in which the lawyer is provided (partially) free of charge, has the suspect the right to a lawyer of his own choosing?	Yes
	Is membership of the bar compulsory?	-
	Are special qualifications and/or special training required to practice criminal law?	A lawyer's certificate ( <i>diplome d'avocat</i> ) is required to provide legal assistance (partially) free of charge.
	Are there guarantees for the independence of defence lawyers (e.g. from the police)	-
	Is there any method of monitoring performance/assuring the quality of the work of defence lawyers and/or professional mechanisms used to deal with poor standards of performance (e.g. disciplinary mechanisms)?	Yes – legal aid lawyers are supervised by the heads of court if they have signed a memorandum of criminal defence ( <i>protocole de défense pénale</i> ).
	Is the State obliged to provide the suspect with another lawyer if legal representation proves to be ineffective?	-
<b>EUROPEAN ARREST</b>	Is there an obligation to provide legal advice when the suspect is the subject of a EAW, extradition request or other surrender proceedings?	Yes

<sup>118</sup> T. Spronken, G. Vermeulen, D. de Vocht en L. van Puyenbroeck, *EU Procedural Rights in Criminal Proceedings*, Antwerp-Apeldoorn-Portland, Maklu, 2009, p. 78-79

<sup>119</sup> T. Spronken, G. Vermeulen, D. de Vocht en L. van Puyenbroeck, *EU Procedural Rights in Criminal Proceedings*, Antwerp-Apeldoorn-Portland, Maklu, 2009, pp. 74-77



<b>WARRANT (EAW)<sup>120</sup></b>		
<b>FINANCIAL COST</b>	Is there any information on financial cost borne by the State to ensure the right to legal assistance (as a proportion of the overall legal aid budget)?	<p>In order to meet its fair trial obligations as part of its garde à vue reform, the Ministry of Justice has provided for a significant increase in the budget allocated to legal aid, in the order of 80 million euros. This budget is to meet the cost of, inter alia:</p> <ul style="list-style-type: none"> <li>• Notifying the suspect/accused of his right to silence.</li> <li>• Providing for the presence of a lawyer at the outset of garde à vue and throughout the proceedings.</li> </ul>

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<sup>120</sup> T. Spronken, G. Vermeulen, D. de Vocht en L. van Puyenbroeck, *EU Procedural Rights in Criminal Proceedings*, Antwerp-Apeldoorn-Portland, Maklu, 2009, p. 100-101

GERMANY			
TEMPORAL SCOPE	<i>Dies a quo</i> when the right to legal advice arises? <sup>121</sup>	At the first police interrogation	
		Some time before the police interrogation	
		In any event not later than the when the person is deprived of his liberty	
		Immediately upon arrest	Yes (or at any stage of the defence proceedings: § 137 para 1 of the Code of Criminal Procedure)
		Within x hours after arrest	
		At a later stage (e.g. at a given stage of the investigation or the proceedings)	
	Is it possible to limit the right to contact a lawyer after arrest? If so, in which cases?	No	
	<i>Dies ad quem</i>	Access to legal advice applies all throughout the criminal proceedings, including the post-trial stage?	Yes
SCOPE <i>RATIONE MATERIAE</i>	Questioning <sup>122</sup>	Has the lawyer the right to be present throughout questioning? If so, which kind of questioning does this right cover? (questioning by the police, by the prosecutor, by the investigating judge, by other officials)	Yes – this right covers questioning by the police, prosecutor and investigative judge.
		Can the lawyer and the client deliberate in private before questioning?	Yes
		Can the lawyer and the client deliberate in private during questioning?	Yes

<sup>121</sup> T. Spronken, G. Vermeulen, D. de Vocht en L. van Puyenbroeck, *EU Procedural Rights in Criminal Proceedings*, Antwerp-Apeldoorn-Portland, Maklu, 2009, pp. 38-43

<sup>122</sup> T. Spronken, G. Vermeulen, D. de Vocht en L. van Puyenbroeck, *EU Procedural Rights in Criminal Proceedings*, Antwerp-Apeldoorn-Portland, Maklu, 2009, pp. 50-55

		What can the lawyer do during questioning? (e.g. intervene, ask questions or have the police ask a given question, make remarks, suggest how to answer the question posed, other competencies)	The lawyer has wide scope to participate during the suspect's questioning, including: intervening; asking questions; and making remarks.
	<b>Consultation</b> <sup>123</sup>	Can the lawyer meet with his client in person? If so, can this right be limited? (e.g. consultation by phone, use of glass partition)	Yes – this right is not limited.
		Is the confidentiality of consultation (either by phone or in person) guaranteed?	Yes
		Are there possibilities to supervise the oral (including telephone conversation) and/or the written communication between lawyer and suspect, notably after arrest? If so, in which cases and to what extent?	No
		Can the lawyer visit his client at the police station? If so, can this right be limited? (e.g. in time, frequency, permission needed)	Yes – this right is not limited.
		Can the lawyer visit his client in prison? If so, can this right be limited? (e.g. in time, frequency, permission needed)	Yes – this right is not limited.
<b>MANDATORY DEFENCE/WAIVER of the right</b> <sup>124</sup>	Is the assistance by a lawyer mandatory in criminal proceedings (mandatory defence)? If so, in which cases? (e.g. for certain categories of offences, certain categories of defendant and/or certain procedural stages)		Yes. Grounds/factors for mandatory defence include: age and mental/physical capacity of the suspect; deprivation of liberty of the suspect; factual/legal complexity of the case; and the severity of the sentence that can be imposed. Other circumstances are set out at § 140 para. 1 of the Code of Criminal Procedure.
	Mandatory defence can be derogated or waived? If so, are there special guarantees for the exercise of the right to waiver? (e.g. to be recorded)		Yes

<sup>123</sup> T. Spronken, G. Vermeulen, D. de Vocht en L. van Puyenbroeck, *EU Procedural Rights in Criminal Proceedings*, Antwerp-Apeldoorn-Portland, Maklu, 2009, pp. 42-49

<sup>124</sup> T. Spronken, G. Vermeulen, D. de Vocht en L. van Puyenbroeck, *EU Procedural Rights in Criminal Proceedings*, Antwerp-Apeldoorn-Portland, Maklu, 2009, p. 78-79

<b>CONSEQUENCES OF VIOLATIONS</b>	Is there any remedy that applies when access to legal assistance is delayed or denied? If so, which kind of remedy? (e.g. exclusion of evidence such as prohibition using the confession of a suspect made in absence of his lawyer, prohibition on conducting procedural actions and/or judicial review/re-trial)	-
<b>COMPETENCES OF LAWYERS AND QUALITY CONTROL</b> <sup>125</sup>	Apart from cases in which the lawyer is provided (partially) free of charge, has the suspect the right to a lawyer of his own choosing?	Yes
	Is membership of the bar compulsory?	-
	Are special qualifications and/or special training required to practice criminal law?	There is no mandatory qualifications or training, but a wide range of training courses are offered
	Are there guarantees for the independence of defence lawyers (e.g. from the police)	-
	Is there any method of monitoring performance/assuring the quality of the work of defence lawyers and/or professional mechanisms used to deal with poor standards of performance (e.g. disciplinary mechanisms)?	[There is no quality control of any kind
	Is the State obliged to provide the suspect with another lawyer if legal representation proves to be ineffective?	-
<b>EUROPEAN ARREST WARRANT (EAW)</b> <sup>126</sup>	Is there an obligation to provide legal advice when the suspect is the subject of a EAW, extradition request or other surrender proceedings?	Yes
<b>FINANCIAL COST</b>	Is there any information on financial cost borne by the State to ensure the right to legal assistance (as a proportion of the overall legal aid budget)?	-

<sup>125</sup> T. Spronken, G. Vermeulen, D. de Vocht en L. van Puyenbroeck, *EU Procedural Rights in Criminal Proceedings*, Antwerp-Apeldoorn-Portland, Maklu, 2009, pp. 74-77

<sup>126</sup> T. Spronken, G. Vermeulen, D. de Vocht en L. van Puyenbroeck, *EU Procedural Rights in Criminal Proceedings*, Antwerp-Apeldoorn-Portland, Maklu, 2009, p. 100-101

GREECE			
TEMPORAL SCOPE	<i>Dies a quo</i> when the right to legal advice arises? <sup>127</sup>	At the first police interrogation	
		Some time before the police interrogation	
		In any event not later than the when the person is deprived of his liberty	
		Immediately upon arrest	Yes
		Within x hours after arrest	
		At a later stage (e.g. at a given stage of the investigation or the proceedings)	
		Is it possible to limit the right to contact a lawyer after arrest? If so, in which cases?	Yes – though not expressly provided for in the law, in the 24 hours following arrest the suspect’s contact with his lawyer may occur in practice.
	<i>Dies ad quem</i>	Access to legal advice applies all throughout the criminal proceedings, including the post-trial stage?	Yes
SCOPE RATIONE MATERIAE	Questioning <sup>128</sup>	Has the lawyer the right to be present throughout questioning? If so, which kind of questioning does this right cover? (questioning by the police, by the prosecutor, by the investigating judge, by other officials)	Yes – this right covers questioning by the police, prosecutor and investigative judge.
		Can the lawyer and the client deliberate in private before questioning?	No
		Can the lawyer and the client deliberate in private during questioning?	Yes
		What can the lawyer do during questioning? (e.g. intervene,	The lawyer may make remarks during the suspect’s

<sup>127</sup> T. Spronken, G. Vermeulen, D. de Vocht en L. van Puyenbroeck, *EU Procedural Rights in Criminal Proceedings*, Antwerp-Apeldoorn-Portland, Maklu, 2009, pp. 38-43

<sup>128</sup> T. Spronken, G. Vermeulen, D. de Vocht en L. van Puyenbroeck, *EU Procedural Rights in Criminal Proceedings*, Antwerp-Apeldoorn-Portland, Maklu, 2009, pp. 50-55

		ask questions or have the police ask a given question, make remarks, suggest how to answer the question posed, other competencies)	questioning, as well as consult with his client in private (see above).
	<b>Consultation</b> <sup>129</sup>	Can the lawyer meet with his client in person? If so, can this right be limited? (e.g. consultation by phone, use of glass partition)	After questioning by the police, the lawyer may visit the suspect at the police station – this right is not limited.
		Is the confidentiality of consultation (either by phone or in person) guaranteed?	Yes
		Are there possibilities to supervise the oral (including telephone conversation) and/or the written communication between lawyer and suspect, notably after arrest? If so, in which cases and to what extent?	No
		Can the lawyer visit his client at the police station? If so, can this right be limited? (e.g. in time, frequency, permission needed)	Yes – this right is not limited (see above).
		Can the lawyer visit his client in prison? If so, can this right be limited? (e.g. in time, frequency, permission needed)	Yes – this right is not limited.
<b>MANDATORY DEFENCE/WAIVER of the right</b> <sup>130</sup>	Is the assistance by a lawyer mandatory in criminal proceedings (mandatory defence)? If so, in which cases? (e.g. for certain categories of offences, certain categories of defendant and/or certain procedural stages)		Yes. Grounds/factors for mandatory defence include: age and mental capacity of the suspect; the factual/legal complexity of the case; and the severity of the sentence that can be imposed.
	Mandatory defence can be derogated or waived? If so, are there special guarantees for the exercise of the right to waiver? (e.g. to be recorded)		Yes
<b>CONSEQUENCES OF VIOLATIONS</b>	Is there any remedy that applies when access to legal assistance is delayed or denied? If so, which kind of remedy? (e.g. exclusion of evidence such as prohibition using the confession of a suspect made in absence of his lawyer, prohibition on conducting procedural actions and/or judicial review/re-trial)		No

<sup>129</sup> T. Spronken, G. Vermeulen, D. de Vocht en L. van Puyenbroeck, *EU Procedural Rights in Criminal Proceedings*, Antwerp-Apeldoorn-Portland, Maklu, 2009, pp. 42-49

<sup>130</sup> T. Spronken, G. Vermeulen, D. de Vocht en L. van Puyenbroeck, *EU Procedural Rights in Criminal Proceedings*, Antwerp-Apeldoorn-Portland, Maklu, 2009, p. 78-79

<b>COMPETENCES OF LAWYERS AND QUALITY CONTROL</b> <sup>131</sup>	Apart from cases in which the lawyer is provided (partially) free of charge, has the suspect the right to a lawyer of his own choosing?	Yes
	Is membership of the bar compulsory?	No
	Are special qualifications and/or special training required to practice criminal law?	No
	Are there guarantees for the independence of defence lawyers (e.g. from the police)	-
	Is there any method of monitoring performance/assuring the quality of the work of defence lawyers and/or professional mechanisms used to deal with poor standards of performance (e.g. disciplinary mechanisms)?	No
	Is the State obliged to provide the suspect with another lawyer if legal representation proves to be ineffective?	-
<b>EUROPEAN ARREST WARRANT (EAW)</b> <sup>132</sup>	Is there an obligation to provide legal advice when the suspect is the subject of a EAW, extradition request or other surrender proceedings?	Yes
<b>FINANCIAL COST</b>	Is there any information on financial cost borne by the State to ensure the right to legal assistance (as a proportion of the overall legal aid budget)?	-

<sup>131</sup> T. Spronken, G. Vermeulen, D. de Vocht en L. van Puyenbroeck, *EU Procedural Rights in Criminal Proceedings*, Antwerp-Apeldoorn-Portland, Maklu, 2009, pp. 74-77

<sup>132</sup> T. Spronken, G. Vermeulen, D. de Vocht en L. van Puyenbroeck, *EU Procedural Rights in Criminal Proceedings*, Antwerp-Apeldoorn-Portland, Maklu, 2009, p. 100-101

HUNGARY			
<b>TEMPORAL SCOPE</b>	<i>Dies a quo</i> when the right to legal advice arises? <sup>133</sup>	At the first police interrogation	
		Some time before the police interrogation	
		In any event not later than the when the person is deprived of his liberty	
		Immediately upon arrest	
		Within x hours after arrest	
		At a later stage (e.g. at a given stage of the investigation or the proceedings)	Yes – not later than the first questioning of the defendant.
		Is it possible to limit the right to contact a lawyer after arrest? If so, in which cases?	No
	<i>Dies ad quem</i>	Access to legal advice applies all throughout the criminal proceedings, including the post-trial stage?	Yes
<b>SCOPE RATIONE MATERIAE</b>	<b>Questioning</b> <sup>134</sup>	Has the lawyer the right to be present throughout questioning? If so, which kind of questioning does this right cover? (questioning by the police, by the prosecutor, by the investigating judge, by other officials)	Yes – this right covers questioning by the police, prosecutor and investigative judge.
		Can the lawyer and the client deliberate in private before questioning?	Yes
		Can the lawyer and the client deliberate in private during questioning?	Yes

<sup>133</sup> T. Spronken, G. Vermeulen, D. de Vocht en L. van Puyenbroeck, *EU Procedural Rights in Criminal Proceedings*, Antwerp-Apeldoorn-Portland, Maklu, 2009, pp. 38-43

<sup>134</sup> T. Spronken, G. Vermeulen, D. de Vocht en L. van Puyenbroeck, *EU Procedural Rights in Criminal Proceedings*, Antwerp-Apeldoorn-Portland, Maklu, 2009, pp. 50-55



		What can the lawyer do during questioning? (e.g. intervene, ask questions or have the police ask a given question, make remarks, suggest how to answer the question posed, other competencies)	The lawyer has wide scope to participate during the suspect's questioning, including: intervening; asking questions; and making remarks. The lawyer is also entitled to receive a copy of the minutes taken on the questioning of the suspect.
	<b>Consultation</b> <sup>135</sup>	Can the lawyer meet with his client in person? If so, can this right be limited? (e.g. consultation by phone, use of glass partition)	Yes – this right is not limited.
		Is the confidentiality of consultation (either by phone or in person) guaranteed?	Yes
		Are there possibilities to supervise the oral (including telephone conversation) and/or the written communication between lawyer and suspect, notably after arrest? If so, in which cases and to what extent?	No
		Can the lawyer visit his client at the police station? If so, can this right be limited? (e.g. in time, frequency, permission needed)	Yes – this right is not limited.
		Can the lawyer visit his client in prison? If so, can this right be limited? (e.g. in time, frequency, permission needed)	Yes – this right is not limited.
<b>MANDATORY DEFENCE/WAIVER of the right</b> <sup>136</sup>		Is the assistance by a lawyer mandatory in criminal proceedings (mandatory defence)? If so, in which cases? (e.g. for certain categories of offences, certain categories of defendant and/or certain procedural stages)	Yes. Grounds/factors for mandatory defence include: age and mental/physical capacity of the suspect; deprivation of liberty of the suspect; and the severity of the sentence that can be imposed. Other circumstances include: if the defendant does not speak Hungarian or the language of the procedure; if the defendant is unable to defend himself personally for any other reasons; or if the investigating judge holds the session by way of a closed-circuit communication system.
		Mandatory defence can be derogated or waived? If so, are there special	Yes

<sup>135</sup> T. Spronken, G. Vermeulen, D. de Vocht en L. van Puyenbroeck, *EU Procedural Rights in Criminal Proceedings*, Antwerp-Apeldoorn-Portland, Maklu, 2009, pp. 42-49

<sup>136</sup> T. Spronken, G. Vermeulen, D. de Vocht en L. van Puyenbroeck, *EU Procedural Rights in Criminal Proceedings*, Antwerp-Apeldoorn-Portland, Maklu, 2009, p. 78-79

	guarantees for the exercise of the right to waiver? (e.g. to be recorded)	
<b>CONSEQUENCES OF VIOLATIONS</b>	Is there any remedy that applies when access to legal assistance is delayed or denied? If so, which kind of remedy? (e.g. exclusion of evidence such as prohibition using the confession of a suspect made in absence of his lawyer, prohibition on conducting procedural actions and/or judicial review/re-trial)	Yes – the decision can be appealed (unless there is a relevant exception in the Act XIX of 1998 on Criminal Proceedings that applies).
<b>COMPETENCES OF LAWYERS AND QUALITY CONTROL</b> <sup>137</sup>	Apart from cases in which the lawyer is provided (partially) free of charge, has the suspect the right to a lawyer of his own choosing?	Yes
	Is membership of the bar compulsory?	-
	Are special qualifications and/or special training required to practice criminal law?	No
	Are there guarantees for the independence of defence lawyers (e.g. from the police)	Yes. To guarantee the independence of the defence council, Act XIX of 1998 on Criminal Proceedings (the ‘CPA’) provides that, inter alia, the following shall not act as counsels for the defence:  - persons whose conduct was adverse to the interests of the defendant, or whose interests are adverse to those of the defendant,  - persons who are or have been involved in the case as an expert or advisor, and  - the lawyer acting for a witness cannot act simultaneously as a counsel for the defence.
	Is there any method of monitoring performance/assuring the quality of the work of defence lawyers and/or professional mechanisms used to deal with poor standards of performance (e.g. disciplinary mechanisms)?	No
	Is the State obliged to provide the suspect with another lawyer if legal	No. However, the defendant – with justification – may request the appointment of another counsel. The request shall be judged by the court,

<sup>137</sup> T. Spronken, G. Vermeulen, D. de Vocht en L. van Puyenbroeck, *EU Procedural Rights in Criminal Proceedings*, Antwerp-Apeldoorn-Portland, Maklu, 2009, pp. 74-77

	representation proves to be ineffective?	prosecutor or investigating authority which is processing the case.
<b>EUROPEAN ARREST WARRANT (EAW)<sup>138</sup></b>	Is there an obligation to provide legal advice when the suspect is the subject of a EAW, extradition request or other surrender proceedings?	Yes
<b>FINANCIAL COST</b>	Is there any information on financial cost borne by the State to ensure the right to legal assistance (as a proportion of the overall legal aid budget)?	-

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<sup>138</sup> T. Spronken, G. Vermeulen, D. de Vocht en L. van Puyenbroeck, *EU Procedural Rights in Criminal Proceedings*, Antwerp-Apeldoorn-Portland, Maklu, 2009, p. 100-101

IRELAND			
TEMPORAL SCOPE	<i>Dies a quo</i> when the right to legal advice arises? <sup>139</sup>	At the first police interrogation	
		Some time before the police interrogation	
		In any event not later than the when the person is deprived of his liberty	Yes (when the suspect has been detained at the police station).
		Immediately upon arrest	
		Within x hours after arrest	
		At a later stage (e.g. at a given stage of the investigation or the proceedings)	
	Is it possible to limit the right to contact a lawyer after arrest? If so, in which cases?	No	
	<i>Dies ad quem</i>	Access to legal advice applies all throughout the criminal proceedings, including the post-trial stage?	Yes
SCOPE <i>RATIONE MATERIAE</i>	Questioning <sup>140</sup>	Has the lawyer the right to be present throughout questioning? If so, which kind of questioning does this right cover? (questioning by the police, by the prosecutor, by the investigating judge, by other officials)	No
		Can the lawyer and the client deliberate in private before questioning?	Yes. Also with regards to inferences drawn from failure or refusal to account for objects, marks, etc., Part 4 of the Criminal Justice Act, 2007 provides that such inferences shall not have effect unless the accused was afforded a reasonable opportunity to consult a

<sup>139</sup> T. Spronken, G. Vermeulen, D. de Vocht en L. van Puyenbroeck, *EU Procedural Rights in Criminal Proceedings*, Antwerp-Apeldoorn-Portland, Maklu, 2009, pp. 38-43

<sup>140</sup> T. Spronken, G. Vermeulen, D. de Vocht en L. van Puyenbroeck, *EU Procedural Rights in Criminal Proceedings*, Antwerp-Apeldoorn-Portland, Maklu, 2009, pp. 50-55

			solicitor before such failure or refusal occurs.
		Can the lawyer and the client deliberate in private during questioning?	No
		What can the lawyer do during questioning? (e.g. intervene, ask questions or have the police ask a given question, make remarks, suggest how to answer the question posed, other competencies)	Not applicable (lawyer not present during questioning – see above).
	<b>Consultation</b> <sup>141</sup>	Can the lawyer meet with his client in person? If so, can this right be limited? (e.g. consultation by phone, use of glass partition)	Yes – this right is not limited.
		Is the confidentiality of consultation (either by phone or in person) guaranteed?	Yes
		Are there possibilities to supervise the oral (including telephone conversation) and/or the written communication between lawyer and suspect, notably after arrest? If so, in which cases and to what extent?	No
		Can the lawyer visit his client at the police station? If so, can this right be limited? (e.g. in time, frequency, permission needed)	Yes. However, permission to visit is needed and the right is limited in time/frequency – each case is dealt with on its merits by the member-in-charge of the police station.
		Can the lawyer visit his client in prison? If so, can this right be limited? (e.g. in time, frequency, permission needed)	Yes – this right is not limited.
	<b>MANDATORY DEFENCE/WAIVER of the right</b> <sup>142</sup>	Is the assistance by a lawyer mandatory in criminal proceedings (mandatory defence)? If so, in which cases? (e.g. for certain categories of offences, certain categories of defendant and/or certain procedural stages)	No.
		Mandatory defence can be derogated or waived? If so, are there special guarantees for the exercise of the right to waiver? (e.g. to be recorded)	N/A

<sup>141</sup> T. Spronken, G. Vermeulen, D. de Vocht en L. van Puyenbroeck, *EU Procedural Rights in Criminal Proceedings*, Antwerp-Apeldoorn-Portland, Maklu, 2009, pp. 42-49

<sup>142</sup> T. Spronken, G. Vermeulen, D. de Vocht en L. van Puyenbroeck, *EU Procedural Rights in Criminal Proceedings*, Antwerp-Apeldoorn-Portland, Maklu, 2009, p. 78-79

<b>CONSEQUENCES OF VIOLATIONS</b>	Is there any remedy that applies when access to legal assistance is delayed or denied? If so, which kind of remedy? (e.g. exclusion of evidence such as prohibition using the confession of a suspect made in absence of his lawyer, prohibition on conducting procedural actions and/or judicial review/re-trial)	No
<b>COMPETENCES OF LAWYERS AND QUALITY CONTROL<sup>143</sup></b>	Apart from cases in which the lawyer is provided (partially) free of charge, has the suspect the right to a lawyer of his own choosing?	Yes
	Is membership of the bar compulsory?	-
	Are special qualifications and/or special training required to practice criminal law?	No
	Are there guarantees for the independence of defence lawyers (e.g. from the police)	-
	Is there any method of monitoring performance/assuring the quality of the work of defence lawyers and/or professional mechanisms used to deal with poor standards of performance (e.g. disciplinary mechanisms)?	No
	Is the State obliged to provide the suspect with another lawyer if legal representation proves to be ineffective?	-
<b>EUROPEAN ARREST WARRANT (EAW)<sup>144</sup></b>	Is there an obligation to provide legal advice when the suspect is the subject of a EAW, extradition request or other surrender proceedings?	Yes
<b>FINANCIAL COST</b>	Is there any information on financial cost borne by the State to ensure the right to legal assistance (as a proportion of the overall legal aid budget)?	-

<sup>143</sup> T. Spronken, G. Vermeulen, D. de Vocht en L. van Puyenbroeck, *EU Procedural Rights in Criminal Proceedings*, Antwerp-Apeldoorn-Portland, Maklu, 2009, pp. 74-77

<sup>144</sup> T. Spronken, G. Vermeulen, D. de Vocht en L. van Puyenbroeck, *EU Procedural Rights in Criminal Proceedings*, Antwerp-Apeldoorn-Portland, Maklu, 2009, p. 100-101

ITALY			
TEMPORAL SCOPE	<i>Dies a quo</i> when the right to legal advice arises? <sup>145</sup>	At the first police interrogation	
		Some time before the police interrogation	
		In any event not later than the when the person is deprived of his liberty	
		Immediately upon arrest	Yes
		Within x hours after arrest	
		At a later stage (e.g. at a given stage of the investigation or the proceedings)	
		Is it possible to limit the right to contact a lawyer after arrest? If so, in which cases?	No
	<i>Dies ad quem</i>	Access to legal advice applies all throughout the criminal proceedings, including the post-trial stage?	Yes
SCOPE <i>RATIONE MATERIAE</i>	Questioning <sup>146</sup>	Has the lawyer the right to be present throughout questioning? If so, which kind of questioning does this right cover? (questioning by the police, by the prosecutor, by the investigating judge, by other officials)	Yes – this right covers questioning by the prosecutor and investigative judge.
		Can the lawyer and the client deliberate in private before questioning?	Yes

<sup>145</sup> T. Spronken, G. Vermeulen, D. de Vocht en L. van Puyenbroeck, *EU Procedural Rights in Criminal Proceedings*, Antwerp-Apeldoorn-Portland, Maklu, 2009, pp. 38-43

<sup>146</sup> T. Spronken, G. Vermeulen, D. de Vocht en L. van Puyenbroeck, *EU Procedural Rights in Criminal Proceedings*, Antwerp-Apeldoorn-Portland, Maklu, 2009, pp. 50-55

		Can the lawyer and the client deliberate in private during questioning?	Yes
		What can the lawyer do during questioning? (e.g. intervene, ask questions or have the police ask a given question, make remarks, suggest how to answer the question posed, other competencies)	The lawyer has wide scope to participate during the suspect's questioning, including: intervening; asking questions; and making remarks.
	<b>Consultation</b> <sup>147</sup>	Can the lawyer meet with his client in person? If so, can this right be limited? (e.g. consultation by phone, use of glass partition)	Yes. However during preliminary investigations, when there are specific and exceptional reasons the court, at the request of the prosecutor, may delay for up to 5 days the suspect's right to speak with a lawyer.
		Is the confidentiality of consultation (either by phone or in person) guaranteed?	Yes
		Are there possibilities to supervise the oral (including telephone conversation) and/or the written communication between lawyer and suspect, notably after arrest? If so, in which cases and to what extent?	No
		Can the lawyer visit his client at the police station? If so, can this right be limited? (e.g. in time, frequency, permission needed)	Yes – this right is not limited except that during preliminary investigations, when there are specific and exceptional reasons the court, at the request of the prosecutor, may delay for up to 5 days the suspect's right to speak with a lawyer (see above).
Can the lawyer visit his client in prison? If so, can this right be limited? (e.g. in time, frequency, permission needed)	Yes – this right is not limited.		
<b>MANDATORY DEFENCE/WAIVER of the</b>	Is the assistance by a lawyer mandatory in criminal proceedings (mandatory defence)? If so, in which cases? (e.g. for certain categories of offences, certain categories of defendant and/or certain procedural stages)	Yes, in all cases.	

<sup>147</sup> T. Spronken, G. Vermeulen, D. de Vocht en L. van Puyenbroeck, *EU Procedural Rights in Criminal Proceedings*, Antwerp-Apeldoorn-Portland, Maklu, 2009, pp. 42-49

<sup>148</sup> T. Spronken, G. Vermeulen, D. de Vocht en L. van Puyenbroeck, *EU Procedural Rights in Criminal Proceedings*, Antwerp-Apeldoorn-Portland, Maklu, 2009, p. 78-79



<b>right<sup>148</sup></b>	Mandatory defence can be derogated or waived? If so, are there special guarantees for the exercise of the right to waiver? (e.g. to be recorded)	No
<b>CONSEQUENCES OF VIOLATIONS</b>	Is there any remedy that applies when access to legal assistance is delayed or denied? If so, which kind of remedy? (e.g. exclusion of evidence such as prohibition using the confession of a suspect made in absence of his lawyer, prohibition on conducting procedural actions and/or judicial review/re-trial)	Yes, the suspect may appeal the decision.
<b>COMPETENCES OF LAWYERS AND QUALITY CONTROL<sup>149</sup></b>	Apart from cases in which the lawyer is provided (partially) free of charge, has the suspect the right to a lawyer of his own choosing?	Yes
	Is membership of the bar compulsory?	Yes – see below.
	Are special qualifications and/or special training required to practice criminal law?	Yes. To be on the list of approved legal aid lawyers various conditions must be satisfied. These relate to (a) the lawyer's skills and specific professional experience (distinguishing between civil, criminal, administrative, accounting, tax and business voluntary jurisdiction); (b) the absence of disciplinary sanctions imposed over the warning in the five years preceding the lawyer's application; and (c) admission to the Roll of lawyers for at least 2 years.
	Are there guarantees for the independence of defence lawyers (e.g. from the police)	-
	Is there any method of monitoring performance/assuring the quality of the work of defence lawyers and/or professional mechanisms used to deal with poor standards of performance (e.g. disciplinary mechanisms)?	Yes – lawyers provided (partially) free of charge are supervised by the bar.
	Is the State obliged to provide the suspect with another lawyer if legal representation proves to be ineffective?	-
<b>EUROPEAN ARREST</b>	Is there an obligation to provide legal advice when the suspect is the subject of a EAW, extradition request or other surrender proceedings?	Yes

<sup>149</sup> T. Spronken, G. Vermeulen, D. de Vocht en L. van Puyenbroeck, *EU Procedural Rights in Criminal Proceedings*, Antwerp-Apeldoorn-Portland, Maklu, 2009, pp. 74-77

<b>WARRANT (EAW)<sup>150</sup></b>		
<b>FINANCIAL COST</b>	Is there any information on financial cost borne by the State to ensure the right to legal assistance (as a proportion of the overall legal aid budget)?	-

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<sup>150</sup> T. Spronken, G. Vermeulen, D. de Vocht en L. van Puyenbroeck, *EU Procedural Rights in Criminal Proceedings*, Antwerp-Apeldoorn-Portland, Maklu, 2009, p. 100-101

LATVIA			
<b>TEMPORAL SCOPE</b>	<i>Dies a quo</i> when the right to legal advice arises? <sup>151</sup>	At the first police interrogation	
		Some time before the police interrogation	
		In any event not later than the when the person is deprived of his liberty	
		Immediately upon arrest	Yes (although consultation with a lawyer is not possible before questioning by police – see below)
		Within x hours after arrest	
		At a later stage (e.g. at a given stage of the investigation or the proceedings)	
		Is it possible to limit the right to contact a lawyer after arrest? If so, in which cases?	No (although consultation with a lawyer is not possible before questioning by police – see below)
	<i>Dies ad quem</i>	Access to legal advice applies all throughout the criminal proceedings, including the post-trial stage?	Yes
<b>SCOPE RATIONE MATERIAE</b>	<b>Questioning</b> <sup>152</sup>	Has the lawyer the right to be present throughout questioning? If so, which kind of questioning does this right cover? (questioning by the police, by the prosecutor, by the investigating judge, by other officials)	Yes – this right covers questioning by the police, prosecutor and investigative judge.
		Can the lawyer and the client deliberate in	It should be noted that the answers provided to the Spronken report <sup>153</sup> are unclear on this point. The answer to Qn 12 (p.514) confirms that

<sup>151</sup> T. Spronken, G. Vermeulen, D. de Vocht en L. van Puyenbroeck, *EU Procedural Rights in Criminal Proceedings*, Antwerp-Apeldoorn-Portland, Maklu, 2009, pp. 38-43

<sup>152</sup> T. Spronken, G. Vermeulen, D. de Vocht en L. van Puyenbroeck, *EU Procedural Rights in Criminal Proceedings*, Antwerp-Apeldoorn-Portland, Maklu, 2009, pp. 50-55

		private before questioning?	consultation with a lawyer is <b>not</b> possible before questioning by police; whereas the answer to Qn 23 (p.516) that pursuant to Section 82(2) of the Criminal Procedure Law the “ <i>defence counsel may meet with the defendant both before and after a procedural action in order to prepare for the performance of the operation.</i> ”
		Can the lawyer and the client deliberate in private during questioning?	No
		What can the lawyer do during questioning? (e.g. intervene, ask questions or have the police ask a given question, make remarks, suggest how to answer the question posed, other competencies)	The lawyer has wide scope to participate during the suspect’s questioning, including: intervening; asking questions; and making remarks.
	<b>Consultation</b> <sup>154</sup>	Can the lawyer meet with his client in person? If so, can this right be limited? (e.g. consultation by phone, use of glass partition)	Consultation with a lawyer is not possible before questioning by police. Aside from this, the lawyer has a right (not limited) to visit his client held at the police station.
		Is the confidentiality of consultation (either by phone or in person) guaranteed?	Yes
		Are there possibilities to supervise the oral (including telephone conversation) and/or the written communication between lawyer and suspect, notably after arrest? If so, in which cases and to what extent?	No
		Can the lawyer visit his client at the police station? If so, can this right be limited? (e.g. in time, frequency, permission needed)	See above. Consultation with a lawyer is not possible before questioning by police. Aside from this, the lawyer has a right (not limited) to visit his client held at the police station.
		Can the lawyer visit his client in prison? If so, can this right be limited? (e.g. in time, frequency, permission needed)	Yes – this right is not limited.
	<b>MANDATORY</b>	Is the assistance by a lawyer mandatory in criminal proceedings	Yes. Grounds/factors for mandatory defence include: age and

<sup>153</sup> <http://arno.unimaas.nl/show.cgi?fid=16315>

<sup>154</sup> T. Spronken, G. Vermeulen, D. de Vocht en L. van Puyenbroeck, *EU Procedural Rights in Criminal Proceedings*, Antwerp-Apeldoorn-Portland, Maklu, 2009, pp. 42-49

<b>DEFENCE/WAIVER of the right</b> <sup>155</sup>	(mandatory defence)? If so, in which cases? (e.g. for certain categories of offences, certain categories of defendant and/or certain procedural stages)	mental/physical capacity of the suspect. Other grounds are set out in Section 83 of the Criminal Procedure Law and include where the suspect is illiterate.
	Mandatory defence can be derogated or waived? If so, are there special guarantees for the exercise of the right to waiver? (e.g. to be recorded)	Yes
<b>CONSEQUENCES OF VIOLATIONS</b>	Is there any remedy that applies when access to legal assistance is delayed or denied? If so, which kind of remedy? (e.g. exclusion of evidence such as prohibition using the confession of a suspect made in absence of his lawyer, prohibition on conducting procedural actions and/or judicial review/re-trial)	No
<b>COMPETENCES OF LAWYERS AND QUALITY CONTROL</b> <sup>156</sup>	Apart from cases in which the lawyer is provided (partially) free of charge, has the suspect the right to a lawyer of his own choosing?	Yes
	Is membership of the bar compulsory?	-
	Are special qualifications and/or special training required to practice criminal law?	No
	Are there guarantees for the independence of defence lawyers (e.g. from the police)	-
	Is there any method of monitoring performance/assuring the quality of the work of defence lawyers and/or professional mechanisms used to deal with poor standards of performance (e.g. disciplinary mechanisms)?	No
	Is the State obliged to provide the suspect with another lawyer if legal representation proves to be ineffective?	-

<sup>155</sup> T. Spronken, G. Vermeulen, D. de Vocht en L. van Puyenbroeck, *EU Procedural Rights in Criminal Proceedings*, Antwerp-Apeldoorn-Portland, Maklu, 2009, p. 78-79

<sup>156</sup> T. Spronken, G. Vermeulen, D. de Vocht en L. van Puyenbroeck, *EU Procedural Rights in Criminal Proceedings*, Antwerp-Apeldoorn-Portland, Maklu, 2009, pp. 74-77

<b>EUROPEAN ARREST WARRANT (EAW)</b> <sup>157</sup>	Is there an obligation to provide legal advice when the suspect is the subject of a EAW, extradition request or other surrender proceedings?	Yes
<b>FINANCIAL COST</b>	Is there any information on financial cost borne by the State to ensure the right to legal assistance (as a proportion of the overall legal aid budget)?	-

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<sup>157</sup> T. Spronken, G. Vermeulen, D. de Vocht en L. van Puyenbroeck, *EU Procedural Rights in Criminal Proceedings*, Antwerp-Apeldoorn-Portland, Maklu, 2009, p. 100-101

LITHUANIA			
<b>TEMPORAL SCOPE</b>	<i>Dies a quo</i> when the right to legal advice arises? <sup>158</sup>	At the first police interrogation	
		Some time before the police interrogation	
		In any event not later than the when the person is deprived of his liberty	
		Immediately upon arrest	Yes – Article 21(4) of the Code of Criminal Procedure (“the Code”) provides that the suspect has the right to have a defence lawyer from the moment of apprehension or first questioning.
		Within x hours after arrest	
		At a later stage (e.g. at a given stage of the investigation or the proceedings)	
		Is it possible to limit the right to contact a lawyer after arrest? If so, in which cases?	No
	<i>Dies ad quem</i>	Access to legal advice applies all throughout the criminal proceedings, including the post-trial stage?	Yes
<b>SCOPE RATIONE MATERIAE</b>	<b>Questioning</b> <sup>159</sup>	Has the lawyer the right to be present throughout questioning? If so, which kind of questioning does this right cover? (questioning by the police, by the prosecutor, by the investigating judge, by other officials)	Yes – this right covers questioning by the police, prosecutor, investigative judge and any other pre-trial investigation body as set out in Article 165 of the Code.
		Can the lawyer and the client deliberate in private before questioning?	The Code does not provide for the opportunity for the suspect to see/receive advice before the first police questioning, since the defence lawyer will be present during the first questioning only. However, with respect to questioning of the suspect in general, the suspect is entitled to the opportunity

<sup>158</sup> T. Spronken, G. Vermeulen, D. de Vocht en L. van Puyenbroeck, *EU Procedural Rights in Criminal Proceedings*, Antwerp-Apeldoorn-Portland, Maklu, 2009, pp. 38-43

<sup>159</sup> T. Spronken, G. Vermeulen, D. de Vocht en L. van Puyenbroeck, *EU Procedural Rights in Criminal Proceedings*, Antwerp-Apeldoorn-Portland, Maklu, 2009, pp. 50-55

			to see or consult with the defence lawyer before questioning. NB this response – see Qn 12 (p.534) of the Sponken questionnaire – does not tally as Article 24(4) provides that the suspect has the right to have a defence lawyer from the moment of apprehension <b>or</b> first questioning – see above).
		Can the lawyer and the client deliberate in private during questioning?	No
		What can the lawyer do during questioning? (e.g. intervene, ask questions or have the police ask a given question, make remarks, suggest how to answer the question posed, other competencies)	The lawyer has wide scope to participate during the suspect's questioning, including: intervening; asking questions; and making remarks.
	<b>Consultation</b> <sup>160</sup>	Can the lawyer meet with his client in person? If so, can this right be limited? (e.g. consultation by phone, use of glass partition)	Yes – this right is not limited (except that the Code does not provide for the opportunity for the suspect to see/receive advice before the first questioning, since the defence lawyer will be present during the first questioning only – see above).
		Is the confidentiality of consultation (either by phone or in person) guaranteed?	Yes
		Are there possibilities to supervise the oral (including telephone conversation) and/or the written communication between lawyer and suspect, notably after arrest? If so, in which cases and to what extent?	No
		Can the lawyer visit his client at the police station? If so, can this right be limited? (e.g. in time, frequency, permission needed)	Yes – this right is not limited (except that the Code does not provide for the opportunity for the suspect to see/receive advice before the first police questioning, since the defence lawyer will be present during the first questioning only – see above).
		Can the lawyer visit his client in prison? If so, can this right be limited? (e.g. in time, frequency, permission needed)	Yes – this right is not limited.
		Is the assistance by a lawyer mandatory in criminal proceedings	Yes. Grounds/factors for mandatory defence include: age and

**MANDATORY**

<sup>160</sup> T. Spronken, G. Vermeulen, D. de Vocht en L. van Puyenbroeck, *EU Procedural Rights in Criminal Proceedings*, Antwerp-Apeldoorn-Portland, Maklu, 2009, pp. 42-49



<b>DEFENCE/WAIVER of the right</b> <sup>161</sup>	(mandatory defence)? If so, in which cases? (e.g. for certain categories of offences, certain categories of defendant and/or certain procedural stages)	mental/physical capacity of the suspect; the deprivation of liberty of the suspect; and the severity of the sanction that can be imposed. Other grounds are set out in Section 51 of the Code and include proceedings under the accelerated trial procedure.
	Mandatory defence can be derogated or waived? If so, are there special guarantees for the exercise of the right to waiver? (e.g. to be recorded)	Yes
<b>CONSEQUENCES OF VIOLATIONS</b>	Is there any remedy that applies when access to legal assistance is delayed or denied? If so, which kind of remedy? (e.g. exclusion of evidence such as prohibition using the confession of a suspect made in absence of his lawyer, prohibition on conducting procedural actions and/or judicial review/re-trial)	Yes. If the participation of a defence lawyer is not necessary under Article 51 of the Code or not mandatory in other cases prescribed by law, and the decision on the provision of legal assistance guaranteed by the state is made by the service of legal assistance guaranteed by the state, this decision may be appealed against to the administrative court or commission of administrative disputes.  If participation of a defence lawyer is necessary, it is a duty of an investigating official, prosecutor or court to always check for the grounds of mandatory participation of a defence lawyer and appoint a defence lawyer for the suspect or defendant if such suspect or defendant has not invited a defence lawyer.
<b>COMPETENCES OF LAWYERS AND QUALITY CONTROL</b> <sup>162</sup>	Apart from cases in which the lawyer is provided (partially) free of charge, has the suspect the right to a lawyer of his own choosing?	Yes
	Is membership of the bar compulsory?	Yes (see below)
	Are special qualifications and/or special training required to practice criminal law?	Yes. Lawyers provided (partially) free of charge must be defence lawyers who have entered into agreements to provide services of legal assistance guaranteed by the state. Only defence with a favourable reference from the Lithuanian Bar Association with regard to their suitability to provide legal assistance guaranteed by the state may take part in the competitions for defence lawyers providing secondary legal assistance.
	Are there guarantees for the independence of defence lawyers (e.g. from the police)	-

<sup>161</sup> T. Spronken, G. Vermeulen, D. de Vocht en L. van Puyenbroeck, *EU Procedural Rights in Criminal Proceedings*, Antwerp-Apeldoorn-Portland, Maklu, 2009, p. 78-79

<sup>162</sup> T. Spronken, G. Vermeulen, D. de Vocht en L. van Puyenbroeck, *EU Procedural Rights in Criminal Proceedings*, Antwerp-Apeldoorn-Portland, Maklu, 2009, pp. 74-77

	Is there any method of monitoring performance/assuring the quality of the work of defence lawyers and/or professional mechanisms used to deal with poor standards of performance (e.g. disciplinary mechanisms)?	Yes – defence lawyers provided (partially) free of charge) are supervised by bar as well as the government/legal aid board.
	Is the State obliged to provide the suspect with another lawyer if legal representation proves to be ineffective?	-
<b>EUROPEAN ARREST WARRANT (EAW)<sup>163</sup></b>	Is there an obligation to provide legal advice when the suspect is the subject of a EAW, extradition request or other surrender proceedings?	Yes
<b>FINANCIAL COST</b>	Is there any information on financial cost borne by the State to ensure the right to legal assistance (as a proportion of the overall legal aid budget)?	-

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<sup>163</sup> T. Spronken, G. Vermeulen, D. de Vocht en L. van Puyenbroeck, *EU Procedural Rights in Criminal Proceedings*, Antwerp-Apeldoorn-Portland, Maklu, 2009, p. 100-101

<b>LUXEMBOURG</b>			
<b>TEMPORAL SCOPE</b>	<i>Dies a quo</i> when the right to legal advice arises? <sup>164</sup>	At the first police interrogation	
		Some time before the police interrogation	Yes
		In any event not later than the when the person is deprived of his liberty	
		Immediately upon arrest	
		Within x hours after arrest	
		At a later stage (e.g. at a given stage of the investigation or the proceedings)	
		Is it possible to limit the right to contact a lawyer after arrest? If so, in which cases?	No
	<i>Dies ad quem</i>	Access to legal advice applies all throughout the criminal proceedings, including the post-trial stage?	Yes
<b>SCOPE <i>RATIONE MATERIAE</i></b>	<b>Questioning</b> <sup>165</sup>	Has the lawyer the right to be present throughout questioning? If so, which kind of questioning does this right cover? (questioning by the police, by the prosecutor, by the investigating judge, by other officials)	Yes – this right covers questioning by the police and investigative judge.
		Can the lawyer and the client deliberate in private before questioning?	Yes (although there is no specific legal provision guaranteeing this right).
		Can the lawyer and the client deliberate in private during questioning?	No
		What can the lawyer do during questioning? (e.g. intervene, ask questions or have the police ask a given question, make	The lawyer has wide scope to participate during the suspect's questioning, including: intervening; asking

<sup>164</sup> T. Spronken, G. Vermeulen, D. de Vocht en L. van Puyenbroeck, *EU Procedural Rights in Criminal Proceedings*, Antwerp-Apeldoorn-Portland, Maklu, 2009, pp. 38-43

<sup>165</sup> T. Spronken, G. Vermeulen, D. de Vocht en L. van Puyenbroeck, *EU Procedural Rights in Criminal Proceedings*, Antwerp-Apeldoorn-Portland, Maklu, 2009, pp. 50-55

		remarks, suggest how to answer the question posed, other competencies)	questions; and making remarks.
	<b>Consultation</b> <sup>166</sup>	Can the lawyer meet with his client in person? If so, can this right be limited? (e.g. consultation by phone, use of glass partition)	Yes – this right is not limited (although there is also no specific provision that guarantees it).
		Is the confidentiality of consultation (either by phone or in person) guaranteed?	Yes (although there is no specific legal provision guaranteeing this right).
		Are there possibilities to supervise the oral (including telephone conversation) and/or the written communication between lawyer and suspect, notably after arrest? If so, in which cases and to what extent?	No
		Can the lawyer visit his client at the police station? If so, can this right be limited? (e.g. in time, frequency, permission needed)	Yes – this right is not limited.
		Can the lawyer visit his client in prison? If so, can this right be limited? (e.g. in time, frequency, permission needed)	Yes – this right is not limited.
<b>MANDATORY DEFENCE/WAIVER of the right</b> <sup>167</sup>	Is the assistance by a lawyer mandatory in criminal proceedings (mandatory defence)? If so, in which cases? (e.g. for certain categories of offences, certain categories of defendant and/or certain procedural stages)		Yes – the age of a suspect is a ground for mandatory defence.
	Mandatory defence can be derogated or waived? If so, are there special guarantees for the exercise of the right to waiver? (e.g. to be recorded)		Yes. Where legal assistance is not mandatory, the suspect/accused receives a receipt where he certifies that he has been informed of his right to receive legal counsel from a registered lawyer.
<b>CONSEQUENCES OF VIOLATIONS</b>	Is there any remedy that applies when access to legal assistance is delayed or denied? If so, which kind of remedy? (e.g. exclusion of evidence such as prohibition using the confession of a suspect made in absence of his lawyer, prohibition on conducting procedural actions and/or		Yes, it is possible to appeal the decision.

<sup>166</sup> T. Spronken, G. Vermeulen, D. de Vocht en L. van Puyenbroeck, *EU Procedural Rights in Criminal Proceedings*, Antwerp-Apeldoorn-Portland, Maklu, 2009, pp. 42-49

<sup>167</sup> T. Spronken, G. Vermeulen, D. de Vocht en L. van Puyenbroeck, *EU Procedural Rights in Criminal Proceedings*, Antwerp-Apeldoorn-Portland, Maklu, 2009, p. 78-79

	judicial review/re-trial)	
<b>COMPETENCES OF LAWYERS AND QUALITY CONTROL</b> <sup>168</sup>	Apart from cases in which the lawyer is provided (partially) free of charge, has the suspect the right to a lawyer of his own choosing?	Yes
	Is membership of the bar compulsory?	Yes (the lawyer must be registered).
	Are special qualifications and/or special training required to practice criminal law?	No
	Are there guarantees for the independence of defence lawyers (e.g. from the police)	-
	Is there any method of monitoring performance/assuring the quality of the work of defence lawyers and/or professional mechanisms used to deal with poor standards of performance (e.g. disciplinary mechanisms)?	No
	Is the State obliged to provide the suspect with another lawyer if legal representation proves to be ineffective?	-
<b>EUROPEAN ARREST WARRANT (EAW)</b> <sup>169</sup>	Is there an obligation to provide legal advice when the suspect is the subject of a EAW, extradition request or other surrender proceedings?	Yes
<b>FINANCIAL COST</b>	Is there any information on financial cost borne by the State to ensure the right to legal assistance (as a proportion of the overall legal aid budget)?	-

<sup>168</sup> T. Spronken, G. Vermeulen, D. de Vocht en L. van Puyenbroeck, *EU Procedural Rights in Criminal Proceedings*, Antwerp-Apeldoorn-Portland, Maklu, 2009, pp. 74-77

<sup>169</sup> T. Spronken, G. Vermeulen, D. de Vocht en L. van Puyenbroeck, *EU Procedural Rights in Criminal Proceedings*, Antwerp-Apeldoorn-Portland, Maklu, 2009, p. 100-101



MALTA			
TEMPORAL SCOPE	<i>Dies a quo</i> when the right to legal advice arises? <sup>170</sup>	At the first police interrogation	
		Some time before the police interrogation	
		In any event not later than the when the person is deprived of his liberty	
		Immediately upon arrest	
		Within x hours after arrest	
		At a later stage (e.g. at a given stage of the investigation or the proceedings)	Yes. Under current practice, the Malta Police Force allows the suspect to contact a lawyer after the police interrogation is over. However, it should be noted that Article 355AT of the Criminal Code (Chapter 9) – <b>not yet in force</b> – provides for the right to legal advice during police interrogation.
	Is it possible to limit the right to contact a lawyer after arrest? If so, in which cases?	No. However, when Article 355AT comes into force (see row above) it will be possible for the investigating officer to authorise delaying the right to contact a lawyer after the arrest on certain “reasonable grounds”, such as if it would prevent the gathering of evidence. These are set out in sub-sections (5) and (6) of Article 355AT.	
	<i>Dies ad quem</i>	Access to legal advice applies all throughout the criminal proceedings, including the post-trial stage?	Yes
SCOPE RATIONE MATERIAE	Questioning <sup>171</sup>	Has the lawyer the right to be present throughout questioning? If so, which kind of questioning does this right cover? (questioning by the police, by the prosecutor, by the investigating judge, by other officials)	No

<sup>170</sup> T. Spronken, G. Vermeulen, D. de Vocht en L. van Puyenbroeck, *EU Procedural Rights in Criminal Proceedings*, Antwerp-Apeldoorn-Portland, Maklu, 2009, pp. 38-43

<sup>171</sup> T. Spronken, G. Vermeulen, D. de Vocht en L. van Puyenbroeck, *EU Procedural Rights in Criminal Proceedings*, Antwerp-Apeldoorn-Portland, Maklu, 2009, pp. 50-55

		Can the lawyer and the client deliberate in private before questioning?	No – this right will eventually be introduced when Article 355AT (see above) enters into force.
		Can the lawyer and the client deliberate in private during questioning?	No
		What can the lawyer do during questioning? (e.g. intervene, ask questions or have the police ask a given question, make remarks, suggest how to answer the question posed, other competencies)	N/A. The lawyer does not currently have the right to be present during questioning. However, when it comes into force Article 355AT will provide for the right to legal advice during police interrogation (see above).
	<b>Consultation</b> <sup>172</sup>	Can the lawyer meet with his client in person? If so, can this right be limited? (e.g. consultation by phone, use of glass partition)	No – this right will eventually be introduced when Article 355AT (see above) enters into force.
		Is the confidentiality of consultation (either by phone or in person) guaranteed?	No – this guarantee of confidentiality will eventually be introduced when Article 355AT (see above) enters into force.
		Are there possibilities to supervise the oral (including telephone conversation) and/or the written communication between lawyer and suspect, notably after arrest? If so, in which cases and to what extent?	Yes – the Director responsible for prisons may order surveillance the <b>oral communication</b> between lawyer and suspect after arrest. However, personal communication with a lawyer <b>with regard to the proceedings</b> remains confidential.  The Director may also order surveillance of <b>written communication</b> , but only if he has reason to suspect that any such correspondence contains matter <b>not</b> relating to the proceedings.
		Can the lawyer visit his client at the police station? If so, can this right be limited? (e.g. in time, frequency, permission needed)	Yes. Although there is no special provision in national law, in practice, a lawyer is allowed to visit his client at the police station.
		Can the lawyer visit his client in prison? If so, can this right be limited? (e.g. in time, frequency, permission needed)	Yes (permission is required from the Prison Director).
	<b>MANDATORY</b>	Is the assistance by a lawyer mandatory in criminal proceedings (mandatory defence)? If so, in which cases? (e.g. for certain categories of offences, certain	No. However, there are cases, such as those were the suspect is a minor or where the offence carries a severe sanction, when usually

<sup>172</sup> T. Spronken, G. Vermeulen, D. de Vocht en L. van Puyenbroeck, *EU Procedural Rights in Criminal Proceedings*, Antwerp-Apeldoorn-Portland, Maklu, 2009, pp. 42-49



<b>DEFENCE/WAIVER of the right</b> <sup>173</sup>	categories of defendant and/or certain procedural stages)	legal aid is provided; unless this is rejected by the accused.
	Mandatory defence can be derogated or waived? If so, are there special guarantees for the exercise of the right to waiver? (e.g. to be recorded)	Yes, the accused can waive legal aid (see above).
<b>CONSEQUENCES OF VIOLATIONS</b>	Is there any remedy that applies when access to legal assistance is delayed or denied? If so, which kind of remedy? (e.g. exclusion of evidence such as prohibition using the confession of a suspect made in absence of his lawyer, prohibition on conducting procedural actions and/or judicial review/re-trial)	Yes. A case could be filed against the Government for infringement of fundamental human rights.
<b>COMPETENCES OF LAWYERS AND QUALITY CONTROL</b> <sup>174</sup>	Apart from cases in which the lawyer is provided (partially) free of charge, has the suspect the right to a lawyer of his own choosing?	Yes – this right is not explicitly recorded in statute, but under paragraph 8 of Article 355AT (not yet in force) it is an offence for any police officer to try to indicate to a suspect whom they should engage as an advocate.
	Is membership of the bar compulsory?	-
	Are special qualifications and/or special training required to practice criminal law?	No
	Are there guarantees for the independence of defence lawyers (e.g. from the police)	-
	Is there any method of monitoring performance/assuring the quality of the work of defence lawyers and/or professional mechanisms used to deal with poor standards of performance (e.g. disciplinary mechanisms)?	Yes – Judges of the Courts monitor the performance of lawyers providing legal assistance (partially) free of charge.
	Is the State obliged to provide the suspect with another lawyer if legal representation proves to be ineffective?	-
<b>EUROPEAN ARREST</b>	Is there an obligation to provide legal advice when the suspect is the subject of a EAW, extradition request or other surrender proceedings?	Yes – the right to legal advice is given upon arraignment.

<sup>173</sup> T. Spronken, G. Vermeulen, D. de Vocht en L. van Puyenbroeck, *EU Procedural Rights in Criminal Proceedings*, Antwerp-Apeldoorn-Portland, Maklu, 2009, p. 78-79

<sup>174</sup> T. Spronken, G. Vermeulen, D. de Vocht en L. van Puyenbroeck, *EU Procedural Rights in Criminal Proceedings*, Antwerp-Apeldoorn-Portland, Maklu, 2009, pp. 74-77

<b>WARRANT (EAW)<sup>175</sup></b>		
<b>FINANCIAL COST</b>	Is there any information on financial cost borne by the State to ensure the right to legal assistance (as a proportion of the overall legal aid budget)?	-

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<sup>175</sup> T. Spronken, G. Vermeulen, D. de Vocht en L. van Puyenbroeck, *EU Procedural Rights in Criminal Proceedings*, Antwerp-Apeldoorn-Portland, Maklu, 2009, p. 100-101

NETHERLANDS			
TEMPORAL SCOPE	<i>Dies a quo</i> when the right to legal advice arises? <sup>176</sup>	At the first police interrogation	
		Some time before the police interrogation	
		In any event not later than the when the person is deprived of his liberty	
		Immediately upon arrest	
		Within x hours after arrest	
		At a later stage (e.g. at a given stage of the investigation or the proceedings)	Yes
		Is it possible to limit the right to contact a lawyer after arrest? If so, in which cases?	No
	<i>Dies ad quem</i>	Access to legal advice applies all throughout the criminal proceedings, including the post-trial stage?	Yes
SCOPE <i>RATIONE MATERIAE</i>	Questioning <sup>177</sup>	Has the lawyer the right to be present throughout questioning? If so, which kind of questioning does this right cover? (questioning by the police, by the prosecutor, by the investigating judge, by other officials)	The lawyer may <b>not</b> be present during questioning by the police. However, he may be present during questioning by the investigating judge.
		Can the lawyer and the client deliberate in private before questioning?	No

<sup>176</sup> T. Spronken, G. Vermeulen, D. de Vocht en L. van Puyenbroeck, *EU Procedural Rights in Criminal Proceedings*, Antwerp-Apeldoorn-Portland, Maklu, 2009, pp. 38-43

<sup>177</sup> T. Spronken, G. Vermeulen, D. de Vocht en L. van Puyenbroeck, *EU Procedural Rights in Criminal Proceedings*, Antwerp-Apeldoorn-Portland, Maklu, 2009, pp. 50-55

		Can the lawyer and the client deliberate in private during questioning?	No
		What can the lawyer do during questioning? (e.g. intervene, ask questions or have the police ask a given question, make remarks, suggest how to answer the question posed, other competencies)	The lawyer may intervene, ask questions, and make remarks.
	<b>Consultation</b> <sup>178</sup>	Can the lawyer meet with his client in person? If so, can this right be limited? (e.g. consultation by phone, use of glass partition)	Yes – this right is not limited (although consultation before questioning by the police is not possible).
		Is the confidentiality of consultation (either by phone or in person) guaranteed?	Yes (however see row below).
		Are there possibilities to supervise the oral (including telephone conversation) and/or the written communication between lawyer and suspect, notably after arrest? If so, in which cases and to what extent?	Yes – the public prosecutor or the investigating judge may order surveillance measures, but this is usually not done at the very first stage of the investigation (i.e. first consultation between lawyer and suspect). This can be ordered when it is suspected that the communication between lawyer and suspect (a) is intended to inform the suspect about aspects of the investigation that should, at that stage, remain unknown by the suspect in the interest of the investigation or (b) will be abused to obstruct the investigation. The period of surveillance should be limited to the strictly necessary and may not exceed 6 days.
		Can the lawyer visit his client at the police station? If so, can this right be limited? (e.g. in time, frequency, permission needed)	Yes – this right is not limited.
		Can the lawyer visit his client in prison? If so, can this right be limited? (e.g. in time, frequency, permission needed)	Yes – this right is not limited.
	<b>MANDATORY DEFENCE/WAIVER of</b>	Is the assistance by a lawyer mandatory in criminal proceedings (mandatory defence)? If so, in which cases? (e.g. for certain categories of offences, certain categories of defendant and/or certain procedural	Yes, but only in circumstances where the deprivation of liberty of the suspect is at stake.

<sup>178</sup> T. Spronken, G. Vermeulen, D. de Vocht en L. van Puyenbroeck, *EU Procedural Rights in Criminal Proceedings*, Antwerp-Apeldoorn-Portland, Maklu, 2009, pp. 42-49

<b>the right</b> <sup>179</sup>	stages)	
	Mandatory defence can be derogated or waived? If so, are there special guarantees for the exercise of the right to waiver? (e.g. to be recorded)	Yes. The suspect needs to be informed of his right to consult a lawyer and the consequences of his waiver. He normally needs to sign an agreement of waiver. Minors also need to be informed of the fact that with this waiver, he/she also waives his/her right to be assisted by a counsel during the hearing.
<b>CONSEQUENCES OF VIOLATIONS</b>	Is there any remedy that applies when access to legal assistance is delayed or denied? If so, which kind of remedy? (e.g. exclusion of evidence such as prohibition using the confession of a suspect made in absence of his lawyer, prohibition on conducting procedural actions and/or judicial review/re-trial)	Yes – the normal procedures for appealing an administrative decision apply pursuant to the general code on administrative law.
<b>COMPETENCES OF LAWYERS AND QUALITY CONTROL</b> <sup>180</sup>	Apart from cases in which the lawyer is provided (partially) free of charge, has the suspect the right to a lawyer of his own choosing?	Yes
	Is membership of the bar compulsory?	-
	Are special qualifications and/or special training required to practice criminal law?	A lawyer who wants to provide legal assistance (partially) free of charge needs: to have completed law studies; to have practical experience in dealing with criminal cases; and is obliged to participate in additional training every 2 years.
	Are there guarantees for the independence of defence lawyers (e.g. from the police)	-
	Is there any method of monitoring performance/assuring the quality of the work of defence lawyers and/or professional mechanisms used to deal with poor standards of performance (e.g. disciplinary mechanisms)?	Yes – the lawyer providing legal assistance (partially) free of charge is supervised by the government/legal aid board.
	Is the State obliged to provide the suspect with another lawyer if legal representation proves to be ineffective?	-
<b>EUROPEAN ARREST</b>	Is there an obligation to provide legal advice when the suspect is the	Yes

<sup>179</sup> T. Spronken, G. Vermeulen, D. de Vocht en L. van Puyenbroeck, *EU Procedural Rights in Criminal Proceedings*, Antwerp-Apeldoorn-Portland, Maklu, 2009, p. 78-79

<sup>180</sup> T. Spronken, G. Vermeulen, D. de Vocht en L. van Puyenbroeck, *EU Procedural Rights in Criminal Proceedings*, Antwerp-Apeldoorn-Portland, Maklu, 2009, pp. 74-77

<b>WARRANT (EAW)<sup>181</sup></b>	subject of a EAW, extradition request or other surrender proceedings?	
<b>FINANCIAL COST</b>	Is there any information on financial cost borne by the State to ensure the right to legal assistance (as a proportion of the overall legal aid budget)?	The Netherlands estimates it will spend 52 million euros (including the cost of interpreters, but not police and training costs) bringing the right to legal assistance into line with <i>Salduz</i> .

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<sup>181</sup> T. Spronken, G. Vermeulen, D. de Vocht en L. van Puyenbroeck, *EU Procedural Rights in Criminal Proceedings*, Antwerp-Apeldoorn-Portland, Maklu, 2009, p. 100-101

POLAND			
TEMPORAL SCOPE	<i>Dies a quo</i> when the right to legal advice arises? <sup>182</sup>	At the first police interrogation	
		Some time before the police interrogation	
		In any event not later than the when the person is deprived of his liberty	
		Immediately upon arrest	Yes
		Within x hours after arrest	
		At a later stage (e.g. at a given stage of the investigation or the proceedings)	
		Is it possible to limit the right to contact a lawyer after arrest? If so, in which cases?	No
	<i>Dies ad quem</i>	Access to legal advice applies all throughout the criminal proceedings, including the post-trial stage?	Yes
SCOPE <i>RATIONE MATERIAE</i>	Questioning <sup>183</sup>	Has the lawyer the right to be present throughout questioning? If so, which kind of questioning does this right cover? (questioning by the police, by the prosecutor, by the investigating judge, by other officials)	Yes – this right covers questioning by the police, prosecutor, investigative judge and any authority involved in penal proceedings.
		Can the lawyer and the client deliberate in private before questioning?	Yes
		Can the lawyer and the client deliberate in private during questioning?	Yes
		What can the lawyer do during questioning? (e.g.	The lawyer has wide scope to participate during the suspect's

<sup>182</sup> T. Spronken, G. Vermeulen, D. de Vocht en L. van Puyenbroeck, *EU Procedural Rights in Criminal Proceedings*, Antwerp-Apeldoorn-Portland, Maklu, 2009, pp. 38-43

<sup>183</sup> T. Spronken, G. Vermeulen, D. de Vocht en L. van Puyenbroeck, *EU Procedural Rights in Criminal Proceedings*, Antwerp-Apeldoorn-Portland, Maklu, 2009, pp. 50-55

		intervene, ask questions or have the police ask a given question, make remarks, suggest how to answer the question posed, other competencies)	questioning, including: intervening; asking questions; and making remarks.
	<b>Consultation</b> <sup>184</sup>	Can the lawyer meet with his client in person? If so, can this right be limited? (e.g. consultation by phone, use of glass partition)	Yes. However, the person who made the arrest may reserve the right to be present when such a conversation takes place.
		Is the confidentiality of consultation (either by phone or in person) guaranteed?	No. The consultation may be monitored for up to 14 days after the detention. After this consultation must be out of hearing of third parties.
		Are there possibilities to supervise the oral (including telephone conversation) and/or the written communication between lawyer and suspect, notably after arrest? If so, in which cases and to what extent?	Yes. Where particularly justified: (1) the officer who made the arrest may reserve the right to be present when the consultation takes place; and (2) as mentioned above, up to 14 days after the suspect's detention the consultation may be monitored by the presence of an authorised person.
		Can the lawyer visit his client at the police station? If so, can this right be limited? (e.g. in time, frequency, permission needed)	Yes – with the permission of the police officer on duty.
		Can the lawyer visit his client in prison? If so, can this right be limited? (e.g. in time, frequency, permission needed)	Yes – with the permission of the prosecutor under whose control detainee remains.
<b>MANDATORY DEFENCE/WAIVER of the right</b> <sup>185</sup>	Is the assistance by a lawyer mandatory in criminal proceedings (mandatory defence)? If so, in which cases? (e.g. for certain categories of offences, certain categories of defendant and/or certain procedural stages)	Yes. Grounds/factors for mandatory defence include: age and mental/physical capacity of the suspect; deprivation of liberty of the suspect; the factual/legal complexity of the case; and the severity of the sentence that can be imposed.	
	Mandatory defence can be derogated or waived? If so, are there special guarantees for the exercise of the right to waiver? (e.g. to be recorded)	Yes	

<sup>184</sup> T. Spronken, G. Vermeulen, D. de Vocht en L. van Puyenbroeck, *EU Procedural Rights in Criminal Proceedings*, Antwerp-Apeldoorn-Portland, Maklu, 2009, pp. 42-49

<sup>185</sup> T. Spronken, G. Vermeulen, D. de Vocht en L. van Puyenbroeck, *EU Procedural Rights in Criminal Proceedings*, Antwerp-Apeldoorn-Portland, Maklu, 2009, p. 78-79



<b>CONSEQUENCES OF VIOLATIONS</b>	Is there any remedy that applies when access to legal assistance is delayed or denied? If so, which kind of remedy? (e.g. exclusion of evidence such as prohibition using the confession of a suspect made in absence of his lawyer, prohibition on conducting procedural actions and/or judicial review/re-trial)	No
<b>COMPETENCES OF LAWYERS AND QUALITY CONTROL</b> <sup>186</sup>	Apart from cases in which the lawyer is provided (partially) free of charge, has the suspect the right to a lawyer of his own choosing?	Yes
	Is membership of the bar compulsory?	Yes
	Are special qualifications and/or special training required to practice criminal law?	No – (partially) free legal assistance is rendered by regular attorneys.
	Are there guarantees for the independence of defence lawyers (e.g. from the police)	-
	Is there any method of monitoring performance/assuring the quality of the work of defence lawyers and/or professional mechanisms used to deal with poor standards of performance (e.g. disciplinary mechanisms)?	Yes – lawyers provided (partially) free of charge are supervised by the bar.
	Is the State obliged to provide the suspect with another lawyer if legal representation proves to be ineffective?	No. However, on a justifiable motion of the accused or his defence counsel, the president of the court having jurisdiction over the case may appoint a defence counsel in lieu of the acting defence counsel.
<b>EUROPEAN ARREST WARRANT (EAW)</b> <sup>187</sup>	Is there an obligation to provide legal advice when the suspect is the subject of a EAW, extradition request or other surrender proceedings?	Yes
<b>FINANCIAL COST</b>	Is there any information on financial cost borne by the State to ensure the right to legal assistance (as a proportion of the overall legal aid budget)?	-

<sup>186</sup> T. Spronken, G. Vermeulen, D. de Vocht en L. van Puyenbroeck, *EU Procedural Rights in Criminal Proceedings*, Antwerp-Apeldoorn-Portland, Maklu, 2009, pp. 74-77

<sup>187</sup> T. Spronken, G. Vermeulen, D. de Vocht en L. van Puyenbroeck, *EU Procedural Rights in Criminal Proceedings*, Antwerp-Apeldoorn-Portland, Maklu, 2009, p. 100-101

PORTUGAL			
TEMPORAL SCOPE	<i>Dies a quo</i> when the right to legal advice arises? <sup>188</sup>	At the first police interrogation	
		Some time before the police interrogation	
		In any event not later than the when the person is deprived of his liberty	
		Immediately upon arrest	Yes
		Within x hours after arrest	
		At a later stage (e.g. at a given stage of the investigation or the proceedings)	
		Is it possible to limit the right to contact a lawyer after arrest? If so, in which cases?	No
	<i>Dies ad quem</i>	Access to legal advice applies all throughout the criminal proceedings, including the post-trial stage?	Yes
SCOPE RATIONE MATERIAE	Questioning <sup>189</sup>	Has the lawyer the right to be present throughout questioning? If so, which kind of questioning does this right cover? (questioning by the police, by the prosecutor, by the investigating judge, by other officials)	Yes – this right covers questioning by the police, prosecutor and investigative judge.
		Can the lawyer and the client deliberate in private before questioning?	Yes
		Can the lawyer and the client deliberate in private	Yes

<sup>188</sup> T. Spronken, G. Vermeulen, D. de Vocht en L. van Puyenbroeck, *EU Procedural Rights in Criminal Proceedings*, Antwerp-Apeldoorn-Portland, Maklu, 2009, pp. 38-43

<sup>189</sup> T. Spronken, G. Vermeulen, D. de Vocht en L. van Puyenbroeck, *EU Procedural Rights in Criminal Proceedings*, Antwerp-Apeldoorn-Portland, Maklu, 2009, pp. 50-55

		during questioning?		
		What can the lawyer do during questioning? (e.g. intervene, ask questions or have the police ask a given question, make remarks, suggest how to answer the question posed, other competencies)	The lawyer has wide scope to participate during the suspect's questioning, including: intervening; asking questions; and making remarks.	
	<b>Consultation</b> <sup>190</sup>		Can the lawyer meet with his client in person? If so, can this right be limited? (e.g. consultation by phone, use of glass partition)	Yes – this right is not limited.
			Is the confidentiality of consultation (either by phone or in person) guaranteed?	Yes – this right is not limited.
			Are there possibilities to supervise the oral (including telephone conversation) and/or the written communication between lawyer and suspect, notably after arrest? If so, in which cases and to what extent?	No
			Can the lawyer visit his client at the police station? If so, can this right be limited? (e.g. in time, frequency, permission needed)	Yes – this right is not limited.
		Can the lawyer visit his client in prison? If so, can this right be limited? (e.g. in time, frequency, permission needed)	Yes – this right is not limited.	
<b>MANDATORY DEFENCE/WAIVER of the right</b> <sup>191</sup>		Is the assistance by a lawyer mandatory in criminal proceedings (mandatory defence)? If so, in which cases? (e.g. for certain categories of offences, certain categories of defendant and/or certain procedural stages)	Yes. Grounds/factors for mandatory defence include: age and mental/physical capacity of the suspect; deprivation of liberty of the suspect; and the severity of the sentence that can be imposed. Other circumstances are set out in Section 83 of the Criminal Procedure Law and include if the suspect is illiterate.	
		Mandatory defence can be derogated or waived? If so, are there special guarantees for the exercise of the right to waiver? (e.g. to be recorded)	Yes	

<sup>190</sup> T. Spronken, G. Vermeulen, D. de Vocht en L. van Puyenbroeck, *EU Procedural Rights in Criminal Proceedings*, Antwerp-Apeldoorn-Portland, Maklu, 2009, pp. 42-49

<sup>191</sup> T. Spronken, G. Vermeulen, D. de Vocht en L. van Puyenbroeck, *EU Procedural Rights in Criminal Proceedings*, Antwerp-Apeldoorn-Portland, Maklu, 2009, p. 78-79

<b>CONSEQUENCES OF VIOLATIONS</b>	Is there any remedy that applies when access to legal assistance is delayed or denied? If so, which kind of remedy? (e.g. exclusion of evidence such as prohibition using the confession of a suspect made in absence of his lawyer, prohibition on conducting procedural actions and/or judicial review/re-trial)	No
<b>COMPETENCES OF LAWYERS AND QUALITY CONTROL</b> <sup>192</sup>	Apart from cases in which the lawyer is provided (partially) free of charge, has the suspect the right to a lawyer of his own choosing?	Yes
	Is membership of the bar compulsory?	No – Article 62 of the Status of the Portuguese Bar Association determines that the choice of a lawyer is personal and cannot be limited in any way.
	Are special qualifications and/or special training required to practice criminal law?	No
	Are there guarantees for the independence of defence lawyers (e.g. from the police)	-
	Is there any method of monitoring performance/assuring the quality of the work of defence lawyers and/or professional mechanisms used to deal with poor standards of performance (e.g. disciplinary mechanisms)?	No
	Is the State obliged to provide the suspect with another lawyer if legal representation proves to be ineffective?	-
<b>EUROPEAN ARREST WARRANT (EAW)</b> <sup>193</sup>	Is there an obligation to provide legal advice when the suspect is the subject of a EAW, extradition request or other surrender proceedings?	Yes
<b>FINANCIAL COST</b>	Is there any information on financial cost borne by the State to ensure the right to legal assistance (as a proportion of the overall legal aid budget)?	-

<sup>192</sup> T. Spronken, G. Vermeulen, D. de Vocht en L. van Puyenbroeck, *EU Procedural Rights in Criminal Proceedings*, Antwerp-Apeldoorn-Portland, Maklu, 2009, pp. 74-77

<sup>193</sup> T. Spronken, G. Vermeulen, D. de Vocht en L. van Puyenbroeck, *EU Procedural Rights in Criminal Proceedings*, Antwerp-Apeldoorn-Portland, Maklu, 2009, p. 100-101



ROMANIA			
TEMPORAL SCOPE	<i>Dies a quo</i> when the right to legal advice arises? <sup>194</sup>	At the first police interrogation	
		Some time before the police interrogation	
		In any event not later than the when the person is deprived of his liberty	
		Immediately upon arrest	Yes
		Within x hours after arrest	
		At a later stage (e.g. at a given stage of the investigation or the proceedings)	
		Is it possible to limit the right to contact a lawyer after arrest? If so, in which cases?	No
	<i>Dies ad quem</i>	Access to legal advice applies all throughout the criminal proceedings, including the post-trial stage?	Yes
SCOPE <i>RATIONE MATERIAE</i>	Questioning <sup>195</sup>	Has the lawyer the right to be present throughout questioning? If so, which kind of questioning does this right cover? (questioning by the police, by the prosecutor, by the investigating judge, by other officials)	Yes – this right covers questioning by the police and prosecutor.
		Can the lawyer and the client deliberate in private before questioning?	Yes
		Can the lawyer and the client deliberate in private during questioning?	No

<sup>194</sup> T. Spronken, G. Vermeulen, D. de Vocht en L. van Puyenbroeck, *EU Procedural Rights in Criminal Proceedings*, Antwerp-Apeldoorn-Portland, Maklu, 2009, pp. 38-43

<sup>195</sup> T. Spronken, G. Vermeulen, D. de Vocht en L. van Puyenbroeck, *EU Procedural Rights in Criminal Proceedings*, Antwerp-Apeldoorn-Portland, Maklu, 2009, pp. 50-55

		What can the lawyer do during questioning? (e.g. intervene, ask questions or have the police ask a given question, make remarks, suggest how to answer the question posed, other competencies)	The lawyer may participate during the suspect's questioning, including by: intervening; asking questions; and making remarks.
	<b>Consultation</b> <sup>196</sup>	Can the lawyer meet with his client in person? If so, can this right be limited? (e.g. consultation by phone, use of glass partition)	Yes – this right is not limited.
		Is the confidentiality of consultation (either by phone or in person) guaranteed?	Yes (however see below).
		Are there possibilities to supervise the oral (including telephone conversation) and/or the written communication between lawyer and suspect, notably after arrest? If so, in which cases and to what extent?	Yes. <b>Oral communication</b> may be monitored under the Criminal Procedure Code, Articles 911- 916. The interception of communication can be ordered only by the judge, and under special exceptional circumstances (for example offences involving national security). However, if in urgent cases it is necessary to intercept communications and there is not time to comply with a hearing before a judge, the prosecutor can order it for at maximum 48 hours in which the prosecutor must present the reasons and the results of this measure to the judge who in turn must, within 24 hours, confirm the measure or reject it. If he rejects it, the recordings will be deleted.  As regards <b>written communications</b> , the court, on an application by the prosecutor and if requested by the interest of the criminal investigation or the trial, may order that any post office retain and deliver to the authorities letters or any objects that are sent by the defendant or addressed to him.
		Can the lawyer visit his client at the police station? If so, can this right be limited? (e.g. in time, frequency, permission needed)	Yes – this right is not limited.
		Can the lawyer visit his client in prison? If so, can this right be limited? (e.g. in time, frequency, permission needed)	Yes – this right is not limited.

<sup>196</sup> T. Spronken, G. Vermeulen, D. de Vocht en L. van Puyenbroeck, *EU Procedural Rights in Criminal Proceedings*, Antwerp-Apeldoorn-Portland, Maklu, 2009, pp. 42-49

<b>MANDATORY DEFENCE/WAIVER of the right<sup>197</sup></b>	Is the assistance by a lawyer mandatory in criminal proceedings (mandatory defence)? If so, in which cases? (e.g. for certain categories of offences, certain categories of defendant and/or certain procedural stages)	Yes. Grounds/factors for mandatory defence include: age of the suspect; legal complexity of the case; and deprivation of liberty of the suspect. Other circumstances are set out in Article 171(2) and (3) of the Criminal Procedure Code and include cases when the punishment for the offence at issue is 5 years' imprisonment or greater, or life imprisonment.
	Mandatory defence can be derogated or waived? If so, are there special guarantees for the exercise of the right to waiver? (e.g. to be recorded)	Yes
<b>CONSEQUENCES OF VIOLATIONS</b>	Is there any remedy that applies when access to legal assistance is delayed or denied? If so, which kind of remedy? (e.g. exclusion of evidence such as prohibition using the confession of a suspect made in absence of his lawyer, prohibition on conducting procedural actions and/or judicial review/re-trial)	There is no remedy other than the general obligation for all judicial bodies to afford the parties the full exercise of their procedural rights at all times.
<b>COMPETENCES OF LAWYERS AND QUALITY CONTROL<sup>198</sup></b>	Apart from cases in which the lawyer is provided (partially) free of charge, has the suspect the right to a lawyer of his own choosing?	Yes
	Is membership of the bar compulsory?	Yes
	Are special qualifications and/or special training required to practice criminal law?	Yes. The bar appoints lawyers to be the Register of judicial assistance for granting judicial aid, taking into account such factors as the professional experience and the qualifications of the lawyer, as well as the nature and the complexity of the case.
	Are there guarantees for the independence of defence lawyers (e.g. from the police)	-
	Is there any method of monitoring performance/assuring the quality of the work of defence lawyers and/or professional mechanisms used to deal with poor standards of performance (e.g. disciplinary mechanisms)?	Yes. The bar is obliged by law to check the quality of assistance granted and, if necessary, take appropriate measures. The council of the bar can also refuse the lawyer's request to be admitted to, or delete the name of a lawyer from, the judicial assistance Register (see above) where for example the lawyer has been

<sup>197</sup> T. Spronken, G. Vermeulen, D. de Vocht en L. van Puyenbroeck, *EU Procedural Rights in Criminal Proceedings*, Antwerp-Apeldoorn-Portland, Maklu, 2009, p. 78-79

<sup>198</sup> T. Spronken, G. Vermeulen, D. de Vocht en L. van Puyenbroeck, *EU Procedural Rights in Criminal Proceedings*, Antwerp-Apeldoorn-Portland, Maklu, 2009, pp. 74-77



		subject to a disciplinary sanction.
	Is the State obliged to provide the suspect with another lawyer if legal representation proves to be ineffective?	-
<b>EUROPEAN ARREST WARRANT (EAW)<sup>199</sup></b>	Is there an obligation to provide legal advice when the suspect is the subject of a EAW, extradition request or other surrender proceedings?	Yes
<b>FINANCIAL COST</b>	Is there any information on financial cost borne by the State to ensure the right to legal assistance (as a proportion of the overall legal aid budget)?	-

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<sup>199</sup> T. Spronken, G. Vermeulen, D. de Vocht en L. van Puyenbroeck, *EU Procedural Rights in Criminal Proceedings*, Antwerp-Apeldoorn-Portland, Maklu, 2009, p. 100-101

SCOTLAND <sup>200</sup>			
<b>TEMPORAL SCOPE</b>	<i>Dies a quo</i> when the right to legal advice arises? <sup>201</sup>	At the first police interrogation	
		Some time before the police interrogation	
		In any event not later than the when the person is deprived of his liberty	
		Immediately upon arrest	Yes
		Within x hours after arrest	
		At a later stage (e.g. at a given stage of the investigation or the proceedings)	
		Is it possible to limit the right to contact a lawyer after arrest? If so, in which cases?	Yes – if some delay is necessary in the suspect’s exercise of his right to contact a lawyer in the interest of the investigation or the prevention of crime or the apprehension of offenders, that delay must be no more than is necessary.
	<i>Dies ad quem</i>	Access to legal advice applies all throughout the criminal proceedings, including the post-trial stage?	Yes
<b>SCOPE RATIONE MATERIAE</b>	<b>Questioning</b> <sup>202</sup>	Has the lawyer the right to be present throughout questioning? If so, which kind of questioning does this right cover? (questioning by the police, by the prosecutor, by the investigating judge, by other officials)	Yes – this right covers questioning by the police.

<sup>200</sup> This country fiche has been updated to reflect *The Criminal Procedure (Legal Assistance, Detention and Appeals) (Scotland) Act 2010*. The information therefore diverges from that included in the report by T. Spronken, G. Vermeulen, D. de Vocht en L. van Puyenbroeck, *EU Procedural Rights in Criminal Proceedings*, Antwerp-Apeldoorn-Portland, Maklu, 2009.

<sup>201</sup> T. Spronken, G. Vermeulen, D. de Vocht en L. van Puyenbroeck, *EU Procedural Rights in Criminal Proceedings*, Antwerp-Apeldoorn-Portland, Maklu, 2009, pp. 38-43

<sup>202</sup> T. Spronken, G. Vermeulen, D. de Vocht en L. van Puyenbroeck, *EU Procedural Rights in Criminal Proceedings*, Antwerp-Apeldoorn-Portland, Maklu, 2009, pp. 50-55

		Can the lawyer and the client deliberate in private before questioning?	Yes. However, in exceptional circumstances, a constable may delay the suspect's exercise of this right of private consultation so far as it is necessary in the interest of the investigation or the prevention of crime or the apprehension of offenders that the questioning of the suspect by a constable begins or continues without the suspect having had a private consultation with a solicitor.
		Can the lawyer and the client deliberate in private during questioning?	See the row above.
		What can the lawyer do during questioning? (e.g. intervene, ask questions or have the police ask a given question, make remarks, suggest how to answer the question posed, other competencies)	The lawyer has wide scope to participate during the suspect's questioning, including: intervening; asking questions; and making remarks.
	<b>Consultation</b> <sup>203</sup>	Can the lawyer meet with his client in person? If so, can this right be limited? (e.g. consultation by phone, use of glass partition)	Yes, however this right can be limited. Section 15A of Criminal Procedure (Scotland) Act 1995 (as amended) provides that consultation a solicitor and suspect takes place " <i>by such means as may be appropriate in the circumstances, and includes, for example, consultation by means of telephone.</i> "
		Is the confidentiality of consultation (either by phone or in person) guaranteed?	Yes (however see row below regarding written consultation).
		Are there possibilities to supervise the oral (including telephone conversation) and/or the written communication between lawyer and suspect, notably after arrest? If so, in which cases and to what extent?	The <b>oral communications</b> between lawyer and suspect may <b>not</b> be supervised.  As regard <b>written communications</b> , under the Prisons and Young Offenders Institutions (Scotland) Rules 2006, rule 58, written correspondence can only be opened in the presence of the prisoner where there is reason to believe it contains a prohibited article. The contents can only be read specifically under the Governor's authority where there is reasonable cause to believe that the content may endanger the security or safety of the prison. The prisoner must be informed about this.
		Can the lawyer visit his client at the police station? If so, can this right be limited? (e.g.	Yes – however, Section 15A of Criminal Procedure (Scotland) Act 1995 (as amended) suggests that this right may be limited. It provides that consultation

<sup>203</sup> T. Spronken, G. Vermeulen, D. de Vocht en L. van Puyenbroeck, *EU Procedural Rights in Criminal Proceedings*, Antwerp-Apeldoorn-Portland, Maklu, 2009, pp. 42-49

		in time, frequency, permission needed)	between a solicitor and suspect take place “ <i>by such means as may be appropriate in the circumstances, and includes, for example, consultation by means of telephone.</i> ” In other words, in certain circumstances the lawyer may be prevented from visiting his client at the police station.
		Can the lawyer visit his client in prison? If so, can this right be limited? (e.g. in time, frequency, permission needed)	Yes. The prisoner is entitled to receive a visit from his or her legal adviser at “ <i>any reasonable time</i> ” for the purposes of consulting about any legal matter in which the prisoner is or may be directly interested (Rule 66(1) of the Prisons and Young Offenders Institutions (Scotland) Rules 2006).
<b>MANDATORY DEFENCE/WAIVER of the right<sup>204</sup></b>	Is the assistance by a lawyer mandatory in criminal proceedings (mandatory defence)? If so, in which cases? (e.g. for certain categories of offences, certain categories of defendant and/or certain procedural stages)		Yes. criminal legal aid is automatically available for: <ul style="list-style-type: none"> <li>• representation at an identification parade;</li> <li>• certain proceedings where the accused has been taken into custody;</li> <li>• cases involving insanity, including an examination of facts;</li> <li>• sexual offences;</li> <li>• trials in absence (in solemn and summary cases); and</li> <li>• cases where on appeal the High Court has granted authority for a new prosecution for the same or a similar offence.</li> </ul>
	Mandatory defence can be derogated or waived? If so, are there special guarantees for the exercise of the right to waiver? (e.g. to be recorded)		Yes
<b>CONSEQUENCES OF VIOLATIONS</b>	Is there any remedy that applies when access to legal assistance is delayed or denied? If so, which kind of remedy? (e.g. exclusion of evidence such as prohibition using the confession of a suspect made in absence of his lawyer, prohibition on conducting procedural actions and/or judicial review/re-trial)		No
<b>COMPETENCES OF</b>	Apart from cases in which the lawyer is provided (partially) free of		Yes

<sup>204</sup> T. Spronken, G. Vermeulen, D. de Vocht en L. van Puyenbroeck, *EU Procedural Rights in Criminal Proceedings*, Antwerp-Apeldoorn-Portland, Maklu, 2009, p. 78-79

<b>LAWYERS AND QUALITY CONTROL</b> <sup>205</sup>	charge, has the suspect the right to a lawyer of his own choosing?	
	Is membership of the bar compulsory?	Yes
	Are special qualifications and/or special training required to practice criminal law?	Lawyers providing legal assistance (partially) free of charge need to be registered with the Scottish Legal Aid Board (“SLAB”).
	Are there guarantees for the independence of defence lawyers (e.g. from the police)	-
	Is there any method of monitoring performance/assuring the quality of the work of defence lawyers and/or professional mechanisms used to deal with poor standards of performance (e.g. disciplinary mechanisms)?	Yes. SLAB can monitor whether the solicitor has correctly applied the eligibility rules etc. In terms of quality of legal services, the solicitor may be called to account through the Law Society and the Scottish Legal Complaints Commission
	Is the State obliged to provide the suspect with another lawyer if legal representation proves to be ineffective?	-
<b>EUROPEAN ARREST WARRANT (EAW)</b> <sup>206</sup>	Is there an obligation to provide legal advice when the suspect is the subject of a EAW, extradition request or other surrender proceedings?	Yes
<b>FINANCIAL COST</b>	Is there any information on financial cost borne by the State to ensure the right to legal assistance (as a proportion of the overall legal aid budget)?	The estimated cost of bringing Scotland into line with <i>Salduz</i> is 26 – 34 million euros.

<sup>205</sup> T. Spronken, G. Vermeulen, D. de Vocht en L. van Puyenbroeck, *EU Procedural Rights in Criminal Proceedings*, Antwerp-Apeldoorn-Portland, Maklu, 2009, pp. 74-77

<sup>206</sup> T. Spronken, G. Vermeulen, D. de Vocht en L. van Puyenbroeck, *EU Procedural Rights in Criminal Proceedings*, Antwerp-Apeldoorn-Portland, Maklu, 2009, p. 100-101



SLOVAK REPUBLIC			
TEMPORAL SCOPE	<i>Dies a quo</i> when the right to legal advice arises? <sup>207</sup>	At the first police interrogation	
		Some time before the police interrogation	
		In any event not later than the when the person is deprived of his liberty	
		Immediately upon arrest	Yes
		Within x hours after arrest	
		At a later stage (e.g. at a given stage of the investigation or the proceedings)	
		Is it possible to limit the right to contact a lawyer after arrest? If so, in which cases?	No
	<i>Dies ad quem</i>	Access to legal advice applies all throughout the criminal proceedings, including the post-trial stage?	Yes
SCOPE <i>RATIONE MATERIAE</i>	Questioning <sup>208</sup>	Has the lawyer the right to be present throughout questioning? If so, which kind of questioning does this right cover? (questioning by the police, by the prosecutor, by the investigating judge, by other officials)	Yes – this right covers questioning by the police, prosecutor and investigative judge.
		Can the lawyer and the client deliberate in private before questioning?	Yes. However this right is implicit rather than expressly stated in statute.
		Can the lawyer and the client deliberate in private during questioning?	No
		What can the lawyer do during questioning? (e.g.	It is unclear what are the precise competences of the lawyer during

<sup>207</sup> T. Spronken, G. Vermeulen, D. de Vocht en L. van Puyenbroeck, *EU Procedural Rights in Criminal Proceedings*, Antwerp-Apeldoorn-Portland, Maklu, 2009, pp. 38-43

<sup>208</sup> T. Spronken, G. Vermeulen, D. de Vocht en L. van Puyenbroeck, *EU Procedural Rights in Criminal Proceedings*, Antwerp-Apeldoorn-Portland, Maklu, 2009, pp. 50-55

		intervene, ask questions or have the police ask a given question, make remarks, suggest how to answer the question posed, other competencies)	questioning. However, Section 34 paragraph 1 of Code on Criminal Procedure provides that " <i>the suspect is not entitled to consult during questioning his defending counsel on how to answer the question posed</i> ".
	<b>Consultation</b> <sup>209</sup>	Can the lawyer meet with his client in person? If so, can this right be limited? (e.g. consultation by phone, use of glass partition)	Yes – this right is not limited (but the lawyer generally needs to produce identification and documents proving that he is authorised to represent the client as a defending counsel in the criminal proceedings).
		Is the confidentiality of consultation (either by phone or in person) guaranteed?	Yes (however see row below).
		Are there possibilities to supervise the oral (including telephone conversation) and/or the written communication between lawyer and suspect, notably after arrest? If so, in which cases and to what extent?	Yes – the judge or prosecutor can order <b>oral surveillance</b> in exceptional cases. An order made by prosecutor must be later approved by the judge, otherwise it is invalid and cannot be used as evidence in court. Such surveillance can only be ordered: (1) in cases of " <i>enlisted criminal offences</i> " (corruption, money laundering etc.) if there exists a substantiated assumption that facts relevant for the criminal proceedings might be found out; and (2) in other cases only with the consent of the user of the intercepted telecommunication device. <b>Written surveillance</b> is not permitted.
		Can the lawyer visit his client at the police station? If so, can this right be limited? (e.g. in time, frequency, permission needed)	Yes. However, the lawyer needs permission to visit the suspect and such visit is limited in time/frequency.
		Can the lawyer visit his client in prison? If so, can this right be limited? (e.g. in time, frequency, permission needed)	Yes. However, the lawyer needs permission to visit the suspect and such visit is limited in time/frequency.
<b>MANDATORY DEFENCE/WAIVER of the right</b> <sup>210</sup>	Is the assistance by a lawyer mandatory in criminal proceedings (mandatory defence)? If so, in which cases? (e.g. for certain categories of offences, certain categories of defendant and/or certain procedural stages)	Yes. Grounds/factors for mandatory defence include: age and mental/physical capacity of the suspect; deprivation of liberty of the suspect; and the severity of the sentence that can be imposed. Other situations include extradition cases, or cases against fugitive suspects.	

<sup>209</sup> T. Spronken, G. Vermeulen, D. de Vocht en L. van Puyenbroeck, *EU Procedural Rights in Criminal Proceedings*, Antwerp-Apeldoorn-Portland, Maklu, 2009, pp. 42-49

<sup>210</sup> T. Spronken, G. Vermeulen, D. de Vocht en L. van Puyenbroeck, *EU Procedural Rights in Criminal Proceedings*, Antwerp-Apeldoorn-Portland, Maklu, 2009, p. 78-79



	Mandatory defence can be derogated or waived? If so, are there special guarantees for the exercise of the right to waiver? (e.g. to be recorded)	Yes
<b>CONSEQUENCES OF VIOLATIONS</b>	Is there any remedy that applies when access to legal assistance is delayed or denied? If so, which kind of remedy? (e.g. exclusion of evidence such as prohibition using the confession of a suspect made in absence of his lawyer, prohibition on conducting procedural actions and/or judicial review/re-trial)	Yes – the general remedy of judicial review provided for in the Code on Criminal Procedure.
<b>COMPETENCES OF LAWYERS AND QUALITY CONTROL</b> <sup>211</sup>	Apart from cases in which the lawyer is provided (partially) free of charge, has the suspect the right to a lawyer of his own choosing?	Yes
	Is membership of the bar compulsory?	Yes (see row below)
	Are special qualifications and/or special training required to practice criminal law?	Yes – defence lawyers provided (partially) free of charge must appear in the list of advocates maintained by the Slovak Chamber of Advocates.
	Are there guarantees for the independence of defence lawyers (e.g. from the police)	-
	Is there any method of monitoring performance/assuring the quality of the work of defence lawyers and/or professional mechanisms used to deal with poor standards of performance (e.g. disciplinary mechanisms)?	No
	Is the State obliged to provide the suspect with another lawyer if legal representation proves to be ineffective?	-
<b>EUROPEAN ARREST WARRANT (EAW)</b> <sup>212</sup>	Is there an obligation to provide legal advice when the suspect is the subject of a EAW, extradition request or other surrender proceedings?	Yes
<b>FINANCIAL COST</b>	Is there any information on financial cost borne by the State to ensure the right	-

<sup>211</sup> T. Spronken, G. Vermeulen, D. de Vocht en L. van Puyenbroeck, *EU Procedural Rights in Criminal Proceedings*, Antwerp-Apeldoorn-Portland, Maklu, 2009, pp. 74-77

<sup>212</sup> T. Spronken, G. Vermeulen, D. de Vocht en L. van Puyenbroeck, *EU Procedural Rights in Criminal Proceedings*, Antwerp-Apeldoorn-Portland, Maklu, 2009, p. 100-101

	to legal assistance (as a proportion of the overall legal aid budget)?	
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SLOVENIA			
TEMPORAL SCOPE	<i>Dies a quo</i> when the right to legal advice arises? <sup>213</sup>	At the first police interrogation	
		Some time before the police interrogation	
		In any event not later than the when the person is deprived of his liberty	
		Immediately upon arrest	Yes – however legal aid is not available until after the investigative stage.
		Within x hours after arrest	
		At a later stage (e.g. at a given stage of the investigation or the proceedings)	
		Is it possible to limit the right to contact a lawyer after arrest? If so, in which cases?	No
	<i>Dies ad quem</i>	Access to legal advice applies all throughout the criminal proceedings, including the post-trial stage?	Yes
SCOPE <i>RATIONE MATERIAE</i>	Questioning <sup>214</sup>	Has the lawyer the right to be present throughout questioning? If so, which kind of questioning does this right cover? (questioning by the police, by the prosecutor, by the investigating judge, by other officials)	Yes – this right covers questioning by the police, prosecutor and investigative judge.
		Can the lawyer and the client deliberate in private before questioning?	Yes
		Can the lawyer and the client deliberate in private during questioning?	Yes

<sup>213</sup> T. Spronken, G. Vermeulen, D. de Vocht en L. van Puyenbroeck, *EU Procedural Rights in Criminal Proceedings*, Antwerp-Apeldoorn-Portland, Maklu, 2009, pp. 38-43

<sup>214</sup> T. Spronken, G. Vermeulen, D. de Vocht en L. van Puyenbroeck, *EU Procedural Rights in Criminal Proceedings*, Antwerp-Apeldoorn-Portland, Maklu, 2009, pp. 50-55

		What can the lawyer do during questioning? (e.g. intervene, ask questions or have the police ask a given question, make remarks, suggest how to answer the question posed, other competencies)	The lawyer has wide scope to participate during the suspect's questioning, including: intervening; asking questions; and making remarks.
	<b>Consultation</b> <sup>215</sup>	Can the lawyer meet with his client in person? If so, can this right be limited? (e.g. consultation by phone, use of glass partition)	Yes – this right is not limited.
		Is the confidentiality of consultation (either by phone or in person) guaranteed?	Yes – this right is not limited.
		Are there possibilities to supervise the oral (including telephone conversation) and/or the written communication between lawyer and suspect, notably after arrest? If so, in which cases and to what extent?	No
		Can the lawyer visit his client at the police station? If so, can this right be limited? (e.g. in time, frequency, permission needed)	Yes – this right is not limited.
		Can the lawyer visit his client in prison? If so, can this right be limited? (e.g. in time, frequency, permission needed)	Yes – this right is not limited.
<b>MANDATORY DEFENCE/WAIVER of the right</b> <sup>216</sup>	Is the assistance by a lawyer mandatory in criminal proceedings (mandatory defence)? If so, in which cases? (e.g. for certain categories of offences, certain categories of defendant and/or certain procedural stages)		Yes. Grounds/factors for mandatory defence include: age and mental/physical capacity of the suspect; deprivation of liberty of the suspect; and the severity of the sentence that can be imposed.
	Mandatory defence can be derogated or waived? If so, are there special guarantees for the exercise of the right to waiver? (e.g. to be recorded)		Yes
<b>CONSEQUENCES OF</b>	Is there any remedy that applies when access to legal assistance is delayed or denied? If so, which kind of remedy? (e.g. exclusion of evidence such as prohibition using the confession of a suspect made in absence of his lawyer, prohibition on		Yes. Article 20 of the Free Legal Assistance Law 1/1996 provides that persons entitled to free legal aid may appeal against any

<sup>215</sup> T. Spronken, G. Vermeulen, D. de Vocht en L. van Puyenbroeck, *EU Procedural Rights in Criminal Proceedings*, Antwerp-Apeldoorn-Portland, Maklu, 2009, pp. 42-49

<sup>216</sup> T. Spronken, G. Vermeulen, D. de Vocht en L. van Puyenbroeck, *EU Procedural Rights in Criminal Proceedings*, Antwerp-Apeldoorn-Portland, Maklu, 2009, p. 78-79

<b>VIOLATIONS</b>	conducting procedural actions and/or judicial review/re-trial)	decision to deny this right.
<b>COMPETENCES OF LAWYERS AND QUALITY CONTROL</b> <sup>217</sup>	Apart from cases in which the lawyer is provided (partially) free of charge, has the suspect the right to a lawyer of his own choosing?	Yes.
	Is membership of the bar compulsory?	Yes (see row below)
	Are special qualifications and/or special training required to practice criminal law?	Yes. By an Order of 3rd June 1997, on the establishing of minimum general training and specialization requirements to provide free legal assistance services, the lawyer must be regulated by the Bar Association; have practised law for three years; and have the Legal Practice School certificate.
	Are there guarantees for the independence of defence lawyers (e.g. from the police)	-
	Is there any method of monitoring performance/assuring the quality of the work of defence lawyers and/or professional mechanisms used to deal with poor standards of performance (e.g. disciplinary mechanisms)?	Yes – lawyers providing legal assistance (partially) free of charge are monitored by the bar and government/legal aid board.
	Is the State obliged to provide the suspect with another lawyer if legal representation proves to be ineffective?	-
<b>EUROPEAN ARREST WARRANT (EAW)</b> <sup>218</sup>	Is there an obligation to provide legal advice when the suspect is the subject of a EAW, extradition request or other surrender proceedings?	Yes
<b>FINANCIAL COST</b>	Is there any information on financial cost borne by the State to ensure the right to legal assistance (as a proportion of the overall legal aid budget)?	There is no expenditure on the right to legal assistance during the investigative stage of proceedings (i.e. during police interrogation) as legal aid is available only at the later trial stage.

<sup>217</sup> T. Spronken, G. Vermeulen, D. de Vocht en L. van Puyenbroeck, *EU Procedural Rights in Criminal Proceedings*, Antwerp-Apeldoorn-Portland, Maklu, 2009, pp. 74-77

<sup>218</sup> T. Spronken, G. Vermeulen, D. de Vocht en L. van Puyenbroeck, *EU Procedural Rights in Criminal Proceedings*, Antwerp-Apeldoorn-Portland, Maklu, 2009, p. 100-101

SPAIN			
TEMPORAL SCOPE	<i>Dies a quo</i> when the right to legal advice arises? <sup>219</sup>	At the first police interrogation	
		Some time before the police interrogation	
		In any event not later than the when the person is deprived of his liberty	
		Immediately upon arrest	Yes
		Within x hours after arrest	
		At a later stage (e.g. at a given stage of the investigation or the proceedings)	
		Is it possible to limit the right to contact a lawyer after arrest? If so, in which cases?	No
	<i>Dies ad quem</i>	Access to legal advice applies all throughout the criminal proceedings, including the post-trial stage?	Yes
SCOPE RATIONE MATERIAE	Questioning <sup>220</sup>	Has the lawyer the right to be present throughout questioning? If so, which kind of questioning does this right cover? (questioning by the police, by the prosecutor, by the investigating judge, by other officials)	Yes – this right covers questioning by the police, prosecutor and investigative judge.
		Can the lawyer and the client deliberate in private before questioning?	Yes
		Can the lawyer and the client deliberate in private during questioning?	Yes
		What can the lawyer do during questioning? (e.g.	The lawyer has wide scope to participate during the suspect's

<sup>219</sup> T. Spronken, G. Vermeulen, D. de Vocht en L. van Puyenbroeck, *EU Procedural Rights in Criminal Proceedings*, Antwerp-Apeldoorn-Portland, Maklu, 2009, pp. 38-43

<sup>220</sup> T. Spronken, G. Vermeulen, D. de Vocht en L. van Puyenbroeck, *EU Procedural Rights in Criminal Proceedings*, Antwerp-Apeldoorn-Portland, Maklu, 2009, pp. 50-55

		intervene, ask questions or have the police ask a given question, make remarks, suggest how to answer the question posed, other competencies)	questioning, including: intervening; asking questions; and making remarks.
	<b>Consultation</b> <sup>221</sup>	Can the lawyer meet with his client in person? If so, can this right be limited? (e.g. consultation by phone, use of glass partition)	12 and 13
		Is the confidentiality of consultation (either by phone or in person) guaranteed?	Yes (however see row below).
		Are there possibilities to supervise the oral (including telephone conversation) and/or the written communication between lawyer and suspect, notably after arrest? If so, in which cases and to what extent?	The judge may order the surveillance of communications between the suspect and lawyer. Surveillance is also automatically possible in cases involving terrorism offences.
		Can the lawyer visit his client at the police station? If so, can this right be limited? (e.g. in time, frequency, permission needed)	Yes – this right is not limited.
		Can the lawyer visit his client in prison? If so, can this right be limited? (e.g. in time, frequency, permission needed)	Yes – this right is not limited.
<b>MANDATORY DEFENCE/WAIVER of the right</b> <sup>222</sup>		Is the assistance by a lawyer mandatory in criminal proceedings (mandatory defence)? If so, in which cases? (e.g. for certain categories of offences, certain categories of defendant and/or certain procedural stages)	Yes. Legal assistance is compulsory in criminal proceedings.
		Mandatory defence can be derogated or waived? If so, are there special guarantees for the exercise of the right to waiver? (e.g. to be recorded)	The suspect may deny compulsory legal assistance if his/her detention is due to traffic offences.
<b>CONSEQUENCES OF VIOLATIONS</b>		Is there any remedy that applies when access to legal assistance is delayed or denied? If so, which kind of remedy? (e.g. exclusion of evidence such as prohibition using the confession of a suspect made in absence of his lawyer, prohibition on conducting	Yes – the decision to deny legal aid may be appealed.

<sup>221</sup> T. Spronken, G. Vermeulen, D. de Vocht en L. van Puyenbroeck, *EU Procedural Rights in Criminal Proceedings*, Antwerp-Apeldoorn-Portland, Maklu, 2009, pp. 42-49

<sup>222</sup> T. Spronken, G. Vermeulen, D. de Vocht en L. van Puyenbroeck, *EU Procedural Rights in Criminal Proceedings*, Antwerp-Apeldoorn-Portland, Maklu, 2009, p. 78-79

	procedural actions and/or judicial review/re-trial)	
<b>COMPETENCES OF LAWYERS AND QUALITY CONTROL</b> <sup>223</sup>	Apart from cases in which the lawyer is provided (partially) free of charge, has the suspect the right to a lawyer of his own choosing?	Yes
	Is membership of the bar compulsory?	Yes (see row below)
	Are special qualifications and/or special training required to practice criminal law?	To provide legal assistance (partially) free of charge it is necessary: to belong to a firm that is a member of the Bar Association; to have three years' experience of practicing as a lawyer; and to have the Legal Practice School certificate. A Bachelor in Law is also required.
	Are there guarantees for the independence of defence lawyers (e.g. from the police)	-
	Is there any method of monitoring performance/assuring the quality of the work of defence lawyers and/or professional mechanisms used to deal with poor standards of performance (e.g. disciplinary mechanisms)?	Yes – supervision by the bar and government/legal aid board.
	Is the State obliged to provide the suspect with another lawyer if legal representation proves to be ineffective?	-
<b>EUROPEAN ARREST WARRANT (EAW)</b> <sup>224</sup>	Is there an obligation to provide legal advice when the suspect is the subject of a EAW, extradition request or other surrender proceedings?	Yes
<b>FINANCIAL COST</b>	Is there any information on financial cost borne by the State to ensure the right to legal assistance (as a proportion of the overall legal aid budget)?	-

<sup>223</sup> T. Spronken, G. Vermeulen, D. de Vocht en L. van Puyenbroeck, *EU Procedural Rights in Criminal Proceedings*, Antwerp-Apeldoorn-Portland, Maklu, 2009, pp. 74-77

<sup>224</sup> T. Spronken, G. Vermeulen, D. de Vocht en L. van Puyenbroeck, *EU Procedural Rights in Criminal Proceedings*, Antwerp-Apeldoorn-Portland, Maklu, 2009, p. 100-101



SWEDEN			
<b>TEMPORAL SCOPE</b>	<i>Dies a quo</i> when the right to legal advice arises? <sup>225</sup>	At the first police interrogation	Yes (by this time at the latest)
		Some time before the police interrogation	
		In any event not later than the when the person is deprived of his liberty	
		Immediately upon arrest	
		Within x hours after arrest	
		At a later stage (e.g. at a given stage of the investigation or the proceedings)	No
		Is it possible to limit the right to contact a lawyer after arrest? If so, in which cases?	
	<i>Dies ad quem</i>	Access to legal advice applies all throughout the criminal proceedings, including the post-trial stage?	Yes
<b>SCOPE RATIONE MATERIAE</b>	<b>Questioning</b> <sup>226</sup>	Has the lawyer the right to be present throughout questioning? If so, which kind of questioning does this right cover? (questioning by the police, by the prosecutor, by the investigating judge, by other officials)	Yes – this right covers questioning by the police, prosecutor and other officials, for example customs officials and officials from the Swedish Coast Guard.
		Can the lawyer and the client deliberate in private before questioning?	Yes. There is not an unconditional right for the suspect to, at any time, speak with his lawyer; however, there must be a special reason for not granting it.
		Can the lawyer and the client deliberate in private during questioning?	Yes
		What can the lawyer do during questioning? (e.g. intervene, ask questions or have the police ask a	The lawyer may participate during the suspect's questioning, for example by

<sup>225</sup> T. Spronken, G. Vermeulen, D. de Vocht en L. van Puyenbroeck, *EU Procedural Rights in Criminal Proceedings*, Antwerp-Apeldoorn-Portland, Maklu, 2009, pp. 38-43

<sup>226</sup> T. Spronken, G. Vermeulen, D. de Vocht en L. van Puyenbroeck, *EU Procedural Rights in Criminal Proceedings*, Antwerp-Apeldoorn-Portland, Maklu, 2009, pp. 50-55

		given question, make remarks, suggest how to answer the question posed, other competencies)	asking questions or making remarks.
	<b>Consultation</b> <sup>227</sup>	Can the lawyer meet with his client in person? If so, can this right be limited? (e.g. consultation by phone, use of glass partition)	Yes. See above – there is not an unconditional right for the suspect to, at any time, speak with his lawyer; however, there must be a special reason for not granting it.
		Is the confidentiality of consultation (either by phone or in person) guaranteed?	Yes, defence counsel are permitted to speak in private with the arrested or detained person. However, defence counsel other than public defence counsel may only speak in private with the consent of the leader of the inquiry or of the prosecutor, or when the court considers it would neither impede the inquiry nor threaten order and security at the place of detention (see also row below).
		Are there possibilities to supervise the oral (including telephone conversation) and/or the written communication between lawyer and suspect, notably after arrest? If so, in which cases and to what extent?	Yes – it is possible to supervise the <b>oral communication</b> between lawyer and suspect after arrest but only if the lawyer is <b>not</b> a public defence counsel. Similarly, <b>written communication</b> with defence counsels other than public defence counsels may under certain conditions be supervised, for example for security reasons or if there is a risk that evidence is removed or the inquiry into the matter in any other respect is complicated.
		Can the lawyer visit his client at the police station? If so, can this right be limited? (e.g. in time, frequency, permission needed)	Yes: defence counsel are permitted to speak in private with the arrested or detained person. However, defence counsel other than public defence counsel may only speak in private only on consent of the leader of the inquiry or of the prosecutor, or when the court considers it would neither impede the inquiry nor threaten order and security at the place of detention.
		Can the lawyer visit his client in prison? If so, can this right be limited? (e.g. in time, frequency, permission needed)	Yes. A client detained in prison is allowed to have visitors to the extent it is considered as appropriate. A visit by a member of the Bar Association (i.e. a lawyer) is supervised only if the inmate or the member of the Bar Association makes such a request.
<b>MANDATORY DEFENCE/WAIVER of the right</b> <sup>228</sup>	Is the assistance by a lawyer mandatory in criminal proceedings (mandatory defence)? If so, in which cases? (e.g. for certain categories of offences, certain categories of defendant and/or certain procedural stages)		Yes. In certain instances a public defence counsel may be obligatory. However, the particular grounds for obligatory defence are not prescribed by law. In practice, a public defence counsel is seldom appointed against the suspect's or defendant's wish.
	Mandatory defence can be derogated or waived? If so, are there special guarantees for the exercise of the right to waiver? (e.g. to be recorded)		Yes. It appears that in practice (see above) the right to a public defence counsel may be waived if the suspect so wishes, without any special guarantees for

<sup>227</sup> T. Spronken, G. Vermeulen, D. de Vocht en L. van Puyenbroeck, *EU Procedural Rights in Criminal Proceedings*, Antwerp-Apeldoorn-Portland, Maklu, 2009, pp. 42-49

<sup>228</sup> T. Spronken, G. Vermeulen, D. de Vocht en L. van Puyenbroeck, *EU Procedural Rights in Criminal Proceedings*, Antwerp-Apeldoorn-Portland, Maklu, 2009, p. 78-79

		exercising this right of waiver.
<b>CONSEQUENCES OF VIOLATIONS</b>	Is there any remedy that applies when access to legal assistance is delayed or denied? If so, which kind of remedy? (e.g. exclusion of evidence such as prohibition using the confession of a suspect made in absence of his lawyer, prohibition on conducting procedural actions and/or judicial review/re-trial)	Yes. The decision may be appealed to the Appeal Court.
<b>COMPETENCES OF LAWYERS AND QUALITY CONTROL</b> <sup>229</sup>	Apart from cases in which the lawyer is provided (partially) free of charge, has the suspect the right to a lawyer of his own choosing?	Yes.
	Is membership of the bar compulsory?	The court should seek to engage advocates who regularly function as attorneys before the court (Chapter 21, Section 5 of the Swedish Code of Judicial Procedure). However, membership of the bar is not compulsory.
	Are special qualifications and/or special training required to practice criminal law?	Yes - only an advocate who is considered “suitable for the assignment” can be appointed as public defence counsel (Chapter 21, Section 5 of the Swedish Code of Judicial Procedure).
	Are there guarantees for the independence of defence lawyers (e.g. from the police)	-
	Is there any method of monitoring performance/assuring the quality of the work of defence lawyers and/or professional mechanisms used to deal with poor standards of performance (e.g. disciplinary mechanisms)?	Yes – public defence counsel are monitored by the bar and government/legal aid board.
	Is the State obliged to provide the suspect with another lawyer if legal representation proves to be ineffective?	-
<b>EUROPEAN ARREST WARRANT (EAW)</b> <sup>230</sup>	Is there an obligation to provide legal advice when the suspect is the subject of a EAW, extradition request or other surrender proceedings?	Yes: the same procedural rights apply as during an ordinary Swedish preliminary investigation and trial.
<b>FINANCIAL COST</b>	Is there any information on financial cost borne by the State to ensure the right to legal assistance (as a proportion of the overall legal aid budget)?	-

<sup>229</sup> T. Spronken, G. Vermeulen, D. de Vocht en L. van Puyenbroeck, *EU Procedural Rights in Criminal Proceedings*, Antwerp-Apeldoorn-Portland, Maklu, 2009, pp. 74-77

<sup>230</sup> T. Spronken, G. Vermeulen, D. de Vocht en L. van Puyenbroeck, *EU Procedural Rights in Criminal Proceedings*, Antwerp-Apeldoorn-Portland, Maklu, 2009, p. 100-101

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ANNEX III:

Current situation in Member States in relation to access to a lawyer

NB. A summary of this table is provided below

<b>TEMPORAL SCOPE</b>	<b><i>Dies a quo</i> when the right to legal advice arises?</b>	1. At the first police interrogation
		2. Some time before the police interrogation
		3. Immediately upon arrest
		4. Within <i>x</i> hours of the arrest
		5. At a later stage (e.g. at a given stage of the investigation or the proceedings)
		6. Is it possible to limit the right to contact a lawyer after arrest?
	<b><i>Dies ad quem</i></b>	7. Access to legal advice applies throughout the criminal proceedings, and until the final determination of guilt by the Court (including appeals)?
<b>SCOPE RATIONE MATERIAE</b>	<b>Questioning</b>	8. Has the lawyer the right to be present throughout questioning?
		9. Can the lawyer and the client deliberate in private before questioning?
		10. Can the lawyer and the client deliberate in private during questioning?
		11. Can the lawyer play an active role during questioning? (E.g. intervene, ask questions make remarks, etc.)
	<b>Consultation</b>	12. Is the confidentiality of consultation (either by phone or in person) guaranteed?
		13. Are there possibilities to supervise the oral (including telephone conversation) and/or the written communication between lawyer and suspect, notably after arrest?
		14. Can the lawyer visit his client at the police station?
		15. Can the lawyer visit his client in prison?
<b>MANDATORY DEFENCE/WAIVER of the right</b>	16. Are there circumstances in which legal assistance in criminal proceedings is obligatory (mandatory defence)?	
	17. Mandatory defence can be derogated or waived?	
<b>CONSEQUENCES OF VIOLATIONS</b>	18. Can the confession made by a suspect in the absence of his lawyer be used as evidence in court?	
	19.	
	20.	
	21.	
<b>EUROPEAN ARREST WARRANT (EAW)</b>	22. Does the right to legal advice apply when the suspect is the subject of a EAW?	

SHORT LEGENDA:

N/A: non applicable

(LA): required in order to provide legal assistance (partially) free of charges

	BE	BG	CZ	DK	DE	EE	IE	EL	ES	FR	IT	CY	LV	LT
1.														
2.				√										
3.		√	√		√	√	√	√	√	√	√	√	√	√
4.	24h													
5.														
6.	NO	NO	NO	NO	NO	NO	NO	YES	NO	YES	NO	NO	NO	NO
7.	YES	YES	YES	YES	YES	YES	YES	YES	YES	YES	YES	YES	YES	YES
8.	NO	YES	YES	YES	YES	YES	NO	YES	YES	YES	YES	YES	YES	YES
9.	NO	YES	YES	YES	YES	YES	YES	NO	YES	YES	YES	YES	NO	NO
10.	N/A	YES	YES	YES	YES	YES	NO	YES	YES	YES	YES	YES	NO	NO
11.	N/A	YES	YES	YES	YES	YES	N/A	YES	YES	YES	YES	YES	YES	YES
12.	NO	YES	YES	YES	YES	YES	YES	YES	YES	YES	YES	YES	YES	YES
13.	YES	NO	NO	NO	NO	NO	NO	NO	YES	NO	NO	NO	NO	NO
14.	NO	YES	YES	YES	YES	YES	YES	YES	YES	YES	YES	YES	YES	YES
15.	YES	YES	YES	YES	YES	YES	YES	YES	YES	YES	YES	YES	YES	YES
16.	YES	YES	YES	YES	YES	YES	NO	YES	YES	YES	YES, in all cases	YES	YES	YES
17.	YES	YES	YES	YES	YES	YES	N/A	YES	YES	YES	NO	YES	YES	YES

<b>18.</b>	YES	YES	YES	YES	YES	YES	YES	YES	NO	YES	NO	YES	YES	YES
<b>19.</b>	YES	YES	YES	YES	YES	YES	YES	YES	YES	YES	YES	YES	YES	YES

	LU	HU	MT	NL	AT	PL	PT	RO	SI	SK	FI	SE	Engla nd & Wales	Scotland
<b>1.</b>		√										√		
<b>2.</b>	√		√											
<b>3.</b>						√	√	√	√	√	√		√	√
<b>4.</b>														
<b>5.</b>				√	√									
<b>6.</b>	NO	NO	YES	NO	YES	NO	NO	NO	NO	NO	NO	NO	YES	YES
<b>7.</b>	YES	YES	YES	YES	YES	YES	YES	YES	YES	YES	YES	YES	YES	YES
<b>8.</b>	YES	YES	NO	NO	YES	YES	YES	YES	YES	YES	YES	YES	YES	YES
<b>9.</b>	YES	YES	YES	NO	YES	YES	YES	YES	YES	YES	YES	YES	YES	YES



10.	NO	YES	NO	NO	YES	YES	YES	NO	YES	NO	YES	YES	YES	YES
11.	YES	YES	N/A	YES	YES	YES	YES	YES	YES	Unclear	YES	YES	YES	YES
12.	YES	YES	YES	YES	YES	NO	YES	YES	YES	YES	YES	YES	YES	YES
13.	NO	NO	YES	YES	YES	YES	NO	YES	NO	YES	NO	YES	YES	YES
14.	YES	YES	YES	YES	YES	YES	YES	YES	YES	YES	YES	YES	YES	YES
15.	YES	YES	YES	YES	YES	YES	YES	YES	YES	YES	YES	YES	YES	YES
16.	YES	YES	NO	YES	YES	YES	YES	YES	YES	YES	YES	YES	YES	YES
17.	YES	YES	N/A	YES	YES	YES	YES	YES	YES	YES	YES	YES	YES	YES
18.	YES	YES	YES	YES	YES	YES	NO	YES	YES	YES	YES	YES	YES	YES
19.	YES	YES	YES	YES	YES	YES	YES	YES	YES	YES	YES	YES	YES	YES

## SUMMARY

### TEMPORAL SCOPE

Start-date:

- In the vast majority of MS (20) the right to contact a lawyer can be exercised immediately upon arrest while in some countries this is possible at a certain stage of the investigation or the proceedings. Only in 3 MS (DK, LU and MT), the right to legal advice arises some time before the questioning of the suspect by the police. In one MS (BE) the right to contact a lawyer can only be effected within a certain lapse of time after arrest (24h).
- In the great majority of MS (22), it is not possible to limit the right to contact a lawyer after arrest.

End-date:

- In all MS the right to legal advice applies in principle in all phases of the criminal proceedings, including the trial, and until the final determination of guilt by the Court.

### SCOPE RATIONE MATERIAE

Questioning:

- In almost all MS (24) the lawyer is entitled to be present throughout questioning and in 19 of these countries he can deliberate with his client in private *during* the interrogation.
- In 23 MS the lawyer and the client can deliberate in private *before* questioning. However, there may be limitations to this right (e.g., in AT, in cases of risk of conspiracy or collusion, the public prosecutor may order the monitoring of oral and written contact with the defence counsel.
- With respect to what the lawyer is able to do during questioning, it appears that in most countries he is allowed to play an active role (notably to make remarks and ask questions).

Consultation:

- In nearly all MS it is in principle guaranteed that consultation with a lawyer (in person or by telephone) is out of hearing of third parties and/or without its contents being monitored by any technical means. However, in 11 MS there is the possibility to supervise the oral and/or the written communication between lawyer and suspect.
- It is possible for a defence lawyer to visit his client at the police station in all countries, except for one (BE). The lawyer can visit the suspect detained in prison in

all MS. However there may be limitations to these rights (e.g. in time and/or in frequency).

### **MANDATORY DEFENCE**

- In the overwhelming majority of MS there are circumstances in which legal assistance in criminal proceedings is obligatory, although grounds for mandatory defence may vary significantly. Only in 2 MS (MT and IE) are there no cases of obligatory defence. In one MS (IT) the assistance of a lawyer in criminal cases is always obligatory. This is also the only MS in which the right to be represented by a lawyer can never be waived by the defendant.

### **CONSEQUENCES OF VIOLATIONS**

- Only in 3 Member States (IT, ES, PT) it is not allowed to use as evidence in court statements made by a suspect in the absence of his lawyer.

### **EUROPEAN ARREST WARRANT**

- In all MS the right to legal advice is applicable to EAW proceedings when the MS is the executing MS.

## ANNEX IV

### General statistical information on the number of criminal proceedings in the EU

	2006	2007	2008
AT	238111	247021	240554
BE*	49884	51243	51127
BL	34840	33577	38313
CY	1441	1903	1903
CZ	69445	75728	75728
DK	75202	73078	
EE	51834	50375	50977
FI*	116979	116789	113462
FR			744832
DE			872573
HL	247626	247252	240042
HU	425941	426914	408407
IE*			94215
IT	1207088	1216655	1195300
LV*	51073	50490	48611
LT*	75751	74914	72060
LU	10441	10539	10356
MT*	9015	9026	8783
NL	134400	127600	127400
PL			12899
PT			431919
RO*	481003	477278	460842
SK		110802	104758

SI	14545	15710	15329
SP		944962	995064
SE			119244
E&W	1779300	1732500	1640000
EU 27	<b>5073918</b>	<b>6094356</b>	<b>8174698</b>

\*data are not available

9. **NB: 1. EVIDENCE ON THE NUMBER OF CRIMINAL PROCEEDINGS ACROSS MEMBER STATE WAS COLLECTED DIRECTLY FROM NATIONAL STATISTICS INSTITUTES, WHERE AVAILABLE. DATA ARE NOT AVAILABLE FOR SIX COUNTRIES (BELGIUM, FINLAND, IRELAND, LATVIA, LITHUANIA AND ROMANIA).**
10. **2. WHERE NATIONAL STATISTICS ON NUMBER OF CRIMINAL PROCEEDINGS ARE NOT AVAILABLE, WE HAVE RELIED ON EXTRAPOLATION; WE HAVE CALCULATED THE ANNUAL PERCENTAGE OF CRIMINAL PROCEEDINGS WITHIN THE OVERALL POPULATION IN THOSE COUNTRIES FOR WHICH FIGURES ARE AVAILABLE AND CALCULATED A EUROPEAN AVERAGE USING THIS PERCENTAGES; WE THEN USED THIS AVERAGE TO CALCULATE THE NUMBER OF CRIMINAL PROCEEDINGS IN THE COUNTRIES FOR WHICH DATA ARE NOT AVAILABLE. BY MULTIPLYING THE AVERAGE FOUND BY THE OVERALL POPULATION IN EACH REMAINING MEMBER STATE (BELGIUM, FINLAND, IRELAND, LATVIA, LITHUANIA AND ROMANIA), WE FOUND THE ANNUAL NUMBER OF CRIMINAL PROCEEDINGS IN THE MEMBER STATES FOR WHICH OFFICIAL STATISTICS ARE NOT AVAILABLE.**

## 11. ANNEX V – MODEL CALCULATIONS FOR OPTION 3 (PREFERRED)

Core elements of preferred option	Financial or economic impact
<p>Temporal scope: Member State obliged to provide the suspect with the right to effective access to a lawyer upon the first police interrogation and in any case from the very outset of deprivation of liberty (<b>start-date</b>) and ensure that such access remain available in all phases of the proceedings, until the final determination of guilt by the court (<b>end-date</b>)</p>	<p><u>START-DATE</u></p> <p>This option is cost-neutral as any financial impact related to the right to have access to a lawyer as from the first police interrogation stems from the requisite compliance with the ECHR and is not created by this policy option.</p> <p><u>END-DATE</u></p> <p>As in all Member States the right to legal advice already applies in all phases of the criminal proceedings, including the trial, and until the final determination of guilt by the Court (see Annexe III, page 158), this provision should entail no additional costs either for Member States or for Individuals.</p> <p><b>IMPACT ON EU BODIES AND BUDGET:</b></p> <p>Introducing two new rights for suspects and accused persons at the level of EU law can be expected to lead to a limited increase in the case-load of the ECJ: particularly in the first decade following the lapse of the deadline for implementing the Directive in Member States' laws, Member States' courts are likely to seek clarification of the scope of these rights and the potential consequences of their breach by making preliminary references under Art. 267 TFEU. This can have a low to medium impact on the ECJ's budget.</p>
<p>Ensuring that lawyers can carry out a range of activities which are functional to effective exercise of fair trial rights, and in particular can take an active role during questioning and hearings</p>	<p>This requirement does not appear to entail, <i>per se</i>, additional costs either for Member States or for individuals.</p> <p>It seems very unlikely that a lawyer would charge his client (or the State, if legal aid applies) a different amount for his presence during interrogation depending on whether he is entitled or not, say, to intervene during the interrogation.</p> <p>If wisely implemented this parameter should, on the contrary, ultimately be positive in terms of its financial and economic impact because greater legal certainty would reduce the need for appeals, re-trials and aborted prosecutions (see further analysis of this under intra-procedural remedies).</p>
<p>The waiver of the right to legal advice is subject to specific guarantees so as to avert any abuse especially when in detention</p>	<p>This is expected to be cost-neutral both for Member States and for individuals. While this provision might imply the need for training, generally such training is likely to be part of the normal recurring police training and therefore should not entail any relevant additional costs.</p>

<p>Making intra-procedural remedies available to the suspect or accused in the event of breach of the right to legal advice, as well as the option of appeals/judicial review leading to re-trial</p>	<p><b>Financial cost for Member States</b></p> <p>The provision of intra-procedural remedies in the Directive is not just cost-neutral, but possibly cost-saving: in particular, the prohibition to use evidentiary material gathered in breach of the right to legal advice would reduce the length of judicial processes and the need for appeals. Fewer convictions would need to be overturned on appeal or at retrial following a condemnation of the Member State by the ECtHR, with undisputable saving of costs for the justice system as a whole. Likewise, damages awarded by the ECtHR for violation of Article 6 rights would drastically drop, with the attendant reduction of costs for Member States.</p> <p><b>Financial cost for private individuals/organisations</b></p> <p>None</p>
<p>Ensuring the right of access to lawyers as from the moment where a person is arrested under an EAW in both the executing State and issuing State</p>	<p><b>Financial costs for Member States</b></p> <p>Additional costs on executing states would concern only those Member States who at present do not provide in their legal order for the right of access to a lawyer<sup>231</sup>. This would result in a situation similar to that described under start-date/end-date, where those Member States would need to bear the cost of legal assistance only when the person is entitled to legal aid under domestic law. By assuming that the percentage of EAW cases where the defendant is entitled to legal aid is broadly similar to the percentage of criminal proceedings, this cost could be quantified, for any relevant year, as: total aggregate number of criminal proceedings : total aggregate number of EAWs = total legal aid budget : X (data to be calculated).</p> <p>This calculation, applied to a large Member State (France) for which these data are known for the year 2008, yields the following result.<sup>232</sup></p> <p>The total numbers of EAWs received by judicial authorities in France was 709, while legal aid was granted in approx. one third of criminal cases. On the basis of the ratio above, it could be expected that 236 EAW cases would warrant legal aid.</p> <p>The typical expenditure on criminal legal aid for a criminal case is €1290<sup>233</sup>. Assuming that this is roughly the amount that would be spent on providing legal assistance in the issuing state for a person arrested under an EAW, the total cost is approx. 236 X €1290, i.e. <b>€304,440</b>.</p> <p>The same formula, applied to a small Member State for which all data are also available will yield the following result. For Estonia, where there were 60 EAWs received in 2008 and a high percentage of legal aid cases out of total number of cases (93%): 55 X €1290 = <b>€70,950</b>. For Finland, where there were 23 EAWs received in 2008 and a low percentage of legal aid cases out of the total number of cases (14%): 3.2 X €1290 = <b>€4,153</b></p> <p>Therefore, the cost of this policy option varies significantly depending on the domestic rules on legal aid as well as on the number of EAWs received. In any event, however, the magnitude of this cost can be considered to be rather limited for Member States. There would no be</p>

<sup>231</sup> **Article 11 – Rights of a requested person** All Member States have shown that they had either fully transposed this article or already had provisions in place." Commission document SEC(2007)979Annex to the Report from the Commission on the implementation since 2005 of the Council Framework Decision of 13 June 2002 on the European arrest warrant and the surrender procedures between Member States.

<sup>232</sup> See Cape et al, *Effective Criminal Defence in Europe*, Intersentia, 2010, pp 214 – 218.

<sup>233</sup> Figure taken from the country report (annexes) of the *Study on the Transparency of Costs of Civil Judicial Proceedings in the European Union*, (valid for 2007). The figure was then given a 3% increase to reflect inflation between 2007 and 2008.

additional costs for the issuing Member States as it would merely involve the duty to appoint a lawyer/have a lawyer appointed **at an earlier stage** (i.e. when the EAW is issued) than it is otherwise the case. In fact, the issuing State is the State where criminal prosecution takes or has taken place, so the person subjected to the EAW would have the right to a lawyer in any event, even without the Directive, albeit only upon surrender to that State. The effect of this Directive provision would only be to bring forward the moment where the appointment must be made, but this will not *per se* increase the cost of legal advice, not even when the State provides legal aid.

#### **Financial costs for private individuals/organisations**

In the executing state, individual defendants in EAW cases would have to remunerate their legal counsellor, unless they are entitled to legal aid. The cost stemming from this requirement can be calculated, with some approximation, using the same method as for Member States: total aggregate number of criminal proceedings: total aggregate number of EAWs in 2009 = total aggregate expenses for lawyers in criminal proceedings : X (data to be calculated).

Taking again France as a case example (2008 data), there were 709 EAW cases, while defendants in criminal cases remunerated their lawyer personally in two-thirds of all instances. ),

The typical cost of a private criminal lawyer in 2008 was €309 per hour according to the *Study on the Transparency of Costs of Civil Judicial Proceedings in the European Union*. Assuming that legal advice is unlikely to exceed 5 hours (on the basis that advice in the executing state is likely to be of a preliminary nature, focusing chiefly on the grounds for refusal), the approx. total cost is **€1,500**. This figure, multiplied by 473, the total number of EAW cases, yields an aggregate cost for all private individuals subjected to an EAW in a large Member State of **€730,785**.

An extrapolation for EU-wide costs yields a total aggregate cost in the whole of the EU of around **€30 million**.

In the issuing states there would not be – for the same reasons set out above as concerns Member States – additional costs for private individuals subject to EAW proceedings.

In addition, from the costs as calculated above it is appropriate to subtract the costs, both for Member States and for the individuals concerned, occasioned by the execution of EAWs based on errors which could be remedied at an earlier stage owing to the presence of a lawyer in both the issuing and the executing Member State. For example, if the Directive enables counsel in the issuing State to share information regarding the client with counsel in the executing State, it may be possible to exchange vital information related to the application which may, depending on its nature, even result in the withdrawal of the EAW (e.g. in the case of mistaken identity).

12.



### 13. ANNEX VI – MODEL CALCULATIONS FOR OPTION 4 (DISCARDED)

Core elements of preferred option	Financial or economic impact
<p>Member State obliged to provide the suspect with the right to effective access to a lawyer before and in preparation for the first police interrogation (<b>start-date</b>) and ensure that such access remain available in all phases of the proceedings, until the final determination of guilt by the court (<b>end-date</b>)</p>	<p>The financial and economic burden resulting from both these elements taken per se can not be predicted with any degree of reliability as in the great majority of Member States it would ultimately essentially depend on accused/suspect's case-by-case choice to avail himself or not of the assistance of a lawyer where the measure in hand so allows</p> <p><b>ANALYSED IN CONJUNCTION WITH OBLIGATORY DEFENCE</b></p> <p>However, a significant financial and economic impact is expected to stem from the combination with mandatory defence</p> <p><b>Financial cost for Member States</b></p> <p><u>Start-date</u></p> <p>As this aspect of the policy option requires Member States to grant access to a lawyer before the first police interrogation, its financial impact will vary significantly depending on Member States' legislative <i>status quo</i> and current practice.</p> <p>The cost of the provision of access to a lawyer at the pre-trial stage is a fraction of Member States' total expenditure for legal aid. According to the CEPEJ study,<sup>234</sup> in 2006 EU Member States spent a total of <b>€5.20 billion</b> on legal aid. The average expenditure per Member State was <b>€202 million</b><sup>235</sup>.</p> <p>In England and Wales, <b>€210 million (£192 million – cf. p. 66)</b> was spent on legal aid at pre-trial stage in 2006. This figure, however, accounts for only those cases where the suspect/accused person has exercised his right to a lawyer: these cases represent 54% of the total in England &amp; Wales (in the remainder, the defendant was not assisted by a lawyer, whether paid by himself or through legal aid schemes). Therefore, in order to factor in the cost of the combination of start-date and mandatory defence, the additional legal aid cost stemming from the other 46% of cases currently tried <i>without</i> a lawyer, must be calculated. Assuming the ratio of legal aid as constant, the additional legal aid cost resulting from mandatory defence would be, for England &amp; Wales, as high as of <b>€179 million</b> and the aggregate cost as high as <b>€389 million</b>.</p> <p>This amount can be taken as a tentative benchmark figure for a large Member State's spending on legal aid related to access to a lawyer in the pre-trial stage where a Member State is at least in line with <i>Salduz</i>.</p> <p>A large Member State who is not at all compliant with <i>Salduz</i> may therefore expect to spend up to this amount.</p>

<sup>234</sup> European Commission for the Efficiency of Justice (CEPEJ), "European judicial systems - Edition 2008 (2006 data): Efficiency and quality of justice", Council of Europe, September 2008, Table 2, p.21.

<sup>235</sup> Bulgaria and Romania are included in this figure, even though they were not EU Member States in 2006.

For a medium-sized Member State, one could take the example of the Netherlands, where the Government itself has indicated that the cost of bringing the legislation into line with the ECHR requirements will cost € 52 million. If one factors in that legal aid presently covers 32% of criminal cases in the Netherlands, the cost of Option 4 could be calculated (following the same formula used for England & Wales above), as **€110.5 million** and the aggregate as **€162.5 million**.

#### End-date

The financial impact of this option on Member States will depend on the extent to which Member States already impose mandatory defence and therefore on the extent to which they would have to adjust their current practice and legislative *status quo* to the requirements of the Directive (e.g. Italy, which already imposes mandatory defence to all defendants in all phases of the criminal proceedings, would not need to alter its system at all and would therefore incur no cost).

In order to calculate the average cost of imposing mandatory defence across the board, regard can be had to a large country where mandatory defence is at present only marginal, France, and a small-medium-sized country where mandatory defence is more widely imposed, Hungary. In these two countries, the current annual legal aid expenditure ranges between **€103 million** (France, 2008) and **€319,765** (Hungary, 2006)<sup>236</sup> while the ratio of defendants who chose not to avail of a lawyer varied between 75% (France, 2009) and 30% (Hungary, 2006-2007). If the assistance of a lawyer is made compulsory, the cost of this extension for the Member State's legal aid budget will hover around between **€309 million and €137,046**.

#### **Financial cost for private individuals/organizations**

##### Start-date

Taken in conjunction with obligatory defence, this would require suspects/accused in criminal proceedings to appoint a lawyer as from before and in preparation for the first police interrogation and to remunerate him, unless they are entitled to legal aid. According to estimates provided by the Dutch Ministry of Justice, ensuring that access to a lawyer is made available as from the first interrogation by the police to all the persons taken into custody (360,000 persons are taken into custody in Holland every year. Of these, about 70,000 are juveniles who are already entitled to this early access) would entail the additional cost in legal aid expenditure of Euros 52 million, that is approximately **€179** per person (52 million / (360,000 – 70,000)).

These figures broadly dovetail with those available for Germany, where (save individual agreement between the lawyer and his or her client provides otherwise), the additional lawyer's fees for the period before and during the first police investigation hover around **€170 to**

<sup>236</sup> European Commission for the Efficiency of Justice (CEPEJ), "European judicial systems - Edition 2008 (2006 data):

Efficiency and quality of justice", Council of Europe, September 2008, Table 2, p.20

<sup>237</sup> *Ibid.*

	<p><b>€200.</b></p> <p>Similar data are provided by practitioners in Cyprus: an estimate of the cost of legal advice or assistance during the first police interview, based on the minimum hourly fee of €135 (according to the rules of the Cyprus bar Association) and on the assumption that legal assistance before or during the first police interview does not exceed five hours, defines the average cost for the private individual in the region of €135 – €675.</p> <p><u>End-date</u></p> <p>Taken in conjunction with mandatory defence, this would require defendants to be assisted by a lawyer in all phases of the criminal proceedings, until the final determination of guilt by the court, and to remunerate him, unless they are entitled to legal aid. The cost stemming from this requirement can be calculated, with some approximation, by using the ratio between the legal aid budget of a Member State and the overall number of cases where legal aid is granted, in accordance with this formula: aggregate expense for legal aid : number of criminal cases where legal aid is granted = X (data to be calculated) : number of criminal cases where no legal aid is granted and the lawyer is remunerated by the client. The result will represent the aggregate cost for defendants in criminal proceedings resulting from requiring legal advice throughout the proceedings.</p> <p>If we take <b>Italy</b> with reference to <b>2007</b> (most recent year in which relevant data was available), with a total national cost of legal aid in criminal proceedings of <b>€84.91 million</b> for <b>94,041</b> cases (6.3 % of the overall number of criminal proceedings, i.e. <b>1,499,841</b>), the resulting aggregate cost for defendants who do not receive legal aid (i.e. <b>93.7%</b> of cases) would be <b>€1.26 billion</b>. In order to reflect the higher cost of counsel to private individuals than to the State under legal aid scheme which according to the experts ranges between 2 and 2.5 times, the estimate cost hovers between 2.53 million and 3.17 million.</p> <p>The equivalent cost for a private practitioner is between three and four times higher, in the region of <b>€4,000 – 5,000</b>.<sup>237</sup></p> <p><b>IMPACT ON EU BODIES AND BUDGET:</b></p> <p>Introducing two new rights for suspects and accused persons at the level of EU law can be expected to lead to a limited increase in the case-load of the ECJ: particularly in the first decade following the lapse of the deadline for implementing the Directive in Member States' laws, Member States' courts are likely to seek clarification of the scope of these rights and the potential consequences of their breach by making preliminary references under Art. 267 TFEU. This can have a low to medium impact on the ECJ's budget.</p>
<p>Ensuring that lawyers can carry out a range of activities which are functional to effective exercise of fair trial rights, and in particular can take an active role during questioning and hearings</p>	<p>This requirement does not appear to entail, <i>per se</i>, additional costs either for Member States or for individuals.</p> <p>It seems very unlikely that a lawyer would charge his client (or the State, if legal aid applies) a different amount for his presence during interrogation depending on whether he is entitled or not, say, to intervene during the interrogation.</p>

	If wisely implemented this parameter should, on the contrary, ultimately be positive in terms of its financial and economic impact because greater legal certainty would reduce the need for appeals, re-trials and aborted prosecutions (see further analysis of this under intra-procedural remedies).
Mandatory legal assistance in all circumstances	Potential economic and financial impact for this parameter has been analysed above, in conjunction with that of start-date and end-date.
Making intra-procedural remedies available to the suspect or accused in the event of breach of the right to legal advice, as well as the option of appeals/judicial review leading to re-trial	<p><b>Financial cost for Member States</b></p> <p>The provision of intra-procedural remedies in the Directive is not just cost-neutral, but possibly cost-saving: in particular, the prohibition to use evidentiary material gathered in breach of the right to legal advice would reduce the length of judicial processes and the need for appeals. Fewer convictions would need to be overturned on appeal or at retrial following a condemnation of the Member State by the ECtHR, with undisputable saving of costs for the justice system as a whole. Likewise, damages awarded by the ECtHR for violation of Article 6 rights would drastically drop, with the attendant reduction of costs for Member States.</p> <p>Taking into account the average liquidated damages awarded by the ECtHR, in a range between € 3,000 and 9,000, and the, on the whole, steady number of violations found by the ECtHR in relation to breaches of Article 6 ECHR over the last 10 years<sup>238</sup>, one can estimate the savings for all Member States for the next ten years in the region of <b>€3.73 million to € 11.19 million EUR</b>.</p> <p><b>Financial cost for private individuals/organisations</b></p> <p>None</p>
Ensuring the right of access to lawyers as from the moment where a person is arrested under an EAW in both the executing State and issuing State	<p><b>Financial costs for Member States</b></p> <p>Additional costs on executing states would concern only those Member States who at present do not provide in their legal order for the right of access to a lawyer<sup>239</sup>. This would result in a situation similar to that described under sub-option 1, where those Member States would need to bear the cost of legal assistance only when the person is entitled to legal aid under domestic law. By assuming that the percentage of EAW cases where the defendant is entitled to legal aid is broadly similar to the percentage of criminal proceedings, this cost could be quantified, for any relevant year, as: total aggregate number of criminal proceedings : total aggregate number of EAWs = total legal aid budget : X (data to be calculated).</p> <p>This calculation, applied to a Member State (France) for which these data are known for the year 2008, yields the following result.<sup>240</sup></p> <p>The total numbers of EAWs received by judicial authorities in France was 709, while legal aid was granted in approx. one third of criminal cases. On the basis of the ratio above, it could be expected that 236 EAW cases would warrant legal aid.</p> <p>The typical expenditure on criminal legal aid for a criminal case is</p>

<sup>238</sup> In all, 990 findings of violations (from 164 in 2003 to 158 in 2009). European Court of Human Rights, Annual Report from 2003 to 2009.

<sup>239</sup> **Article 11 – Rights of a requested person** All Member States have shown that they had either fully transposed this article or already had provisions in place." Commission document SEC(2007)979Annex to the Report from the Commission on the implementation since 2005 of the Council Framework Decision of 13 June 2002 on the European arrest warrant and the surrender procedures between Member States.

<sup>240</sup> See Cape et al, *Effective Criminal Defence in Europe*, Intersentia, 2010, pp 214 – 218.

€1290<sup>241</sup>. Assuming that this is roughly the amount that would be spent on providing legal assistance in the issuing state for a person arrested under an EAW, the total cost is approx. 236 X €1290, i.e. **€304,440**.

Based on those numbers we have provided a preliminary extrapolation with an EU-wide cost of €1.2 million.

There would not be additional costs for the issuing Member States as it would merely involve the duty to appoint a lawyer/have a lawyer appointed **at an earlier stage** (i.e. when the EAW is issued) than it is otherwise the case. In fact, the issuing State is the State where criminal prosecution takes or has taken place, so the person subjected to the EAW would have the right to a lawyer in any event, even without the Directive, albeit only upon surrender to that State. The effect of this Directive provision would only be to bring forward the moment where the appointment must be made, but this will not *per se* increase the cost of legal advice, not even when the State provides legal aid.

### **Financial costs for private individuals/organisations**

In the executing state, individual defendants in EAW cases would have to appoint a lawyer and to remunerate him, unless they are entitled to legal aid. The cost stemming from this requirement can be calculated, with some approximation, using the same method as for Member States: total aggregate number of criminal proceedings: total aggregate number of EAWs in 2009 = total aggregate expenses for lawyers in criminal proceedings : X (data to be calculated).

Taking again France as a case example (2008 data), there were 709 EAW cases, while defendants in criminal cases remunerated their lawyer personally in two-thirds of all instances. ),

The typical cost of a private criminal lawyer in 2008 was €309 per hour according to the *Study on the Transparency of Costs of Civil Judicial Proceedings in the European Union*. Assuming that legal advice is unlikely to exceed 5 hours (on the basis that advice in the executing state is likely to be of a preliminary nature, focusing chiefly on the grounds for refusal), the approx. total cost is **€1,500**. This figure, multiplied by 473, the total number of EAW cases, yields an aggregate cost for all private individuals subjected to an EAW in a large Member State of **€730,785**.

An extrapolation for EU-wide costs yields a total aggregate cost in the whole of the EU of around **€30 million**.

In the issuing states there would not be – for the same reasons set out above as concerns Member States – additional costs for private individuals subject to EAW proceedings.

In addition, from the costs as calculated above it is appropriate to subtract the costs, both for Member States and for the individuals concerned, occasioned by the execution of EAWs based on errors which could be remedied at an earlier stage owing to the presence of a lawyer in both the issuing and the executing Member State. For example, if the Directive enables counsel in the issuing State to share information regarding the

<sup>241</sup> Figure taken from the country report (annexes) of the *Study on the Transparency of Costs of Civil Judicial Proceedings in the European Union*, (valid for 2007). The figure was then given a 3% increase to reflect inflation between 2007 and 2008.

	<p>client with counsel in the executing State, it may be possible to exchange vital information related to the application which may, depending on its nature, even result in the withdrawal of the EAW (e.g. in the case of mistaken identity).</p>
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**Current situation in Member States in relation to legal aid budget for criminal proceedings and number of cases where the defendant receives legal aid**

EU Member State	National budget for legal assistance (partially) free of charge in criminal proceedings in absolute terms in 2008 (€) <sup>242</sup>	Criminal cases granted with legal aid per 100,000 inhabitants in 2008 <sup>243</sup>	Number of criminal cases granted with legal aid in 2008 <sup>244</sup>	Number of criminal cases in 2008 <sup>245</sup>	Percentage of criminal cases granted with legal aid out of the total number of criminal cases in 2008 (columns 4 and 5)
Austria	18,879,166 <sup>246</sup>	No data	14,980 <sup>247</sup>	59,812	25%
Belgium	54,220,000	No data	No data	No data	No data
Bulgaria	3,256,423	No data	No data	26,295	No data
Cyprus	232,300	No data	936 <sup>248</sup>	93,170	37% <sup>249</sup>
Czech Republic	21,618,962	No data	No data	103,329	No data
Denmark	40,030,000	No data	No data	106,720	No data
Estonia	3063	2,409	31,317	33,550	93%
Finland	33,300,000	713	9,300 <sup>250</sup>	65,244	14%
France	103,000,000	627	403,161	1,124,074	36%

<sup>242</sup> Figures taken from the study by T. Spronken, G. Vermeulen, D. de Vocht and L. van Puyenbroeck, *EU Procedural Rights in Criminal Proceedings*. See the table on p.73 of the hardcopy version of the study (Antwerp-Apeldoorn-Portland, Maklu, 2009) and the answers to question 53 of the Member States' questionnaire on the electronic version available at <http://arno.unimaas.nl/show.cgi?fid=16315>.

<sup>243</sup> Figures taken from the study by the European Commission for the Efficiency of Justice (CEPEJ), "*European judicial systems - Edition 2010 (2008 data): Efficiency and quality of justice*", Council of Europe, October 2010, Table 3.3, p.52. Criminal cases means here the annual number of cases for which legal aid has been granted to persons going to court (see the explanatory note for Question 23 on p.374).

<sup>244</sup> The figures in this column are estimates that have been (unless otherwise indicated) extrapolated from column 2. They are arrived at by dividing the Member State population (as stated at [http://europa.eu/abc/european\\_countries/eu\\_members/estonia/index\\_en.htm](http://europa.eu/abc/european_countries/eu_members/estonia/index_en.htm)) by 100,000, then multiplying this figure by the number of criminal cases stated in the second column.

<sup>245</sup> See the CEPEJ study, Table 9.25, p.161. The figures refer to the number of incoming criminal cases (severe criminal offences) and misdemeanour cases (minor offences) in first instance courts (absolute figures).

<sup>246</sup> This figure relates to the total amount of legal assistance, including legal aid in civil and criminal matters. A further breakdown is not available.

<sup>247</sup> The figure represents the number of lawyers ordered to provide legal aid representation in 2008. It should be noted that more than one lawyer may be ordered to assist in a single cases (where there is more than one accused). Therefore this figure is approximate only.

<sup>248</sup> This figure represents the number of adult persons proceeded against for serious offences in 2008 (column five meanwhile refers to the number of criminal cases of all kinds). See Republic of Cyprus statistical service, *Criminal Statistics 2008*, p.21.

<sup>249</sup> This figure represents the percentage of adult persons proceeded against for serious offences in 2008 who were **legally represented**. It should be noted that it is not known what proportion of these were funded by legal aid. However, it should also be noted that in any case the rules on legal aid (Section 13 of the Legal Assistance Laws 2003-2006) do not provide for lawyers' costs for consulting with the suspect or accused person either before or during court proceedings to be covered by legal aid in Cyprus.

<sup>250</sup> Cape et al, *Effective Criminal Defence in Europe*, Intersentia, 2010, p.177 (footnote 82).

EU Member State	National budget for legal assistance (partially) free of charge in criminal proceedings in absolute terms in 2008 (€) <sup>242</sup>	Criminal cases granted with legal aid per 100,000 inhabitants in 2008 <sup>243</sup>	Number of criminal cases granted with legal aid in 2008 <sup>244</sup>	Number of criminal cases in 2008 <sup>245</sup>	Percentage of criminal cases granted with legal aid out of the total number of criminal cases in 2008 (columns 4 and 5)
Germany <sup>251</sup>	No data	No data	No data	911,424	No data
Greece	No data	No data	No data	No data	No data
Hungary	No data	28	2,800	262,113	1%
Ireland	55,300,000	1,245	56,025	No data	No data
Italy	No data	165	99,000	1,504,521	7%
Latvia	783,013	No data	No data	38,085	No data
Lithuania	1,941,000	32	1,060	16,472	6%
Luxembourg	No data	No data	No data	49,441	No data
Malta	45,551	No data	No data	15,373	No data
Netherlands	180,400,000 <sup>252</sup>	964	158,096	499,847	32%
Poland	21,454,645	No data	No data	961,869	No data
Portugal	42,306,500 <sup>253</sup>	No data	No data	144,852	No data
Romania	3,441,655	No data	No data	171,119	No data
Slovak Republic	No data	No data	No data	37,593	No data
Slovenia	1,877,817 <sup>254</sup>	42	840	97,885	1%
Spain	30,900,000	No data	No data	1,266,284	No data
Sweden	83,074,374	No data	No data	83,037	No data
United Kingdom	518,647,945	1,144 <sup>255</sup>	588,542 <sup>256</sup>	140,600 <sup>257</sup>	53% <sup>258</sup>
<b>EU average</b>	<b>48,231,323</b>	<b>737</b>	<b>113,838</b>	<b>325,530</b>	<b>28%</b>

<sup>251</sup> There is no legal aid as such in Germany. Instead there are prescribed grounds for issuing a mandatory defence counsel which are set out in Article 140, paragraph 1 of the German Code of Criminal Procedure. Under one of these grounds a defence counsel is then issued to the accused without regards to his/her financial situation. The costs for the defence counsel are costs of the proceedings. If the accused loses the trial, he/she has to bear those costs and therefore has to pay for the defence counsel. But, if he/she is found not guilty, the state has to bear the costs of the proceedings, including those for the defence counsel. The German MoJ has not been able to provide any statistics indicating the cost to the state of either where the defendant loses and is unable/unwilling to pay the costs of his/her defence or where the defendant wins and the costs of the mandatory defence counsel are borne by the state.

<sup>252</sup> This figure relates to 2007.

<sup>253</sup> This figure relates to 2009.

<sup>254</sup> This figure refers to the national budget for legal aid for civil and criminal cases. The actual expenditure was €2,821,428.

<sup>255</sup> This figure is for England & Wales. For Scotland it is 3749; and for Northern Ireland it is 1,740.

<sup>256</sup> This figure is for England & Wales, based on a 2008 population estimate by the Office for National Statistics of 51,446,000. The estimated number for Scotland is 74,884 (Scottish Legal Board Annual Report 2008/9, p.51-54) and Northern Ireland is 31,129.

<sup>257</sup> This figure is for Scotland only.

<sup>258</sup> This figure is for Scotland only.



Sources: *EU Member States' Ministries of Justice; EU Procedural Rights in Criminal Proceedings; European judicial systems - Edition 2010 (2008 data): Efficiency and quality of justice; and Effective Criminal Defence in Europe.*

ANNEX VIII: Overview of notification of custody in Member States

Country	Is there a statutory right to communicate?	Applicable Provision	Can the right to communicate and the right to a lawyer be found in the same provision?	Is the right to communicate respected?	Time of Access		Notification			Feedback	Derogations	Remedies	CPT Recommendations
					Statutory Position	Position in Practice	To whom	By whom	How?				
Austria	Yes	Constitutional Law on the Protection of Personal Liberty (s.4, Paragraph 7). Administrative Criminal Code (s.36, paragraph 3) Law on the Police (s.47, paragraph 1) s.171 paragraph 3(1) of the Code of Criminal Procedure	Yes. s.164 of the Code of Criminal Procedure provides the accused with a lawyer during interview. s. 171 para 3(1) of the Code states that when a suspect is apprehended, he has the right to inform a relative, trustworthy person or lawyer of his arrest, o	Yes - generally well respected.	Detainee must be informed of the right from the outset of deprivation of liberty - "without undue delay" as afforded by the Constitutional Law.	Detainees not always informed from the outset.	Family, third party	Detainee, although not explicitly mentioned.	Orally or in writing	N/A	Not known - needs further examination.	Not known.	Ensure notification from the outset of deprivation of liberty.
Belgium	Yes for détention administrative	Loi sur la fonction de police, Chapitre IV, Sous-section 2, Art. 33quater	Yes - accused has the right to inform a trustworthy person, this could potentially mean a lawyer.	Yes - generally well respected.	Not known	Detainees usually allowed to notify from the outset of deprivation of liberty.	Family, Consulate, third party	Detainee, although not explicitly mentioned.	Orally or in writing	This was not dealt with.	This was not dealt with.	Not known.	No further recommendation.
	No for détention judiciaire	None	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A - the CPT calls for legislation in this area
Bulgaria	Yes	Law on the Ministry of Internal Affairs - the Ministry introduced a new Instruction No. IZ-2451 of 29 December 2006 placing duty on the police to inform accused of his rights.	Yes - in the Instruction, the police must inform the accused of his right to a lawyer, to contact family, consular and to medical care.	Yes - working reasonably well.	Must be informed of their rights immediately after detention.	A few detainees had not been allowed to make a phone call themselves and were thus not aware whether the person indicated by them to the police had been notified of the fact of their detention.	Family, Consulate, third party	By the detainee or police officer.	Orally or in writing	A few detainees were denied ability to call relatives themselves therefore were not sure that third party had been contacted.	Not known - needs further examination.	Not known.	Ensure that detainees given feedback as to whether the notification of their custody has been performed.
Cyprus	Yes	Law 163(I)/2005, the Law on the Rights of Arrested and Detained Persons, Art. 3(1). Before this legislation, the right to communicate and the right to a lawyer derived from Police Standing Order 5/3.	Yes - this particular Article covers the right to a lawyer and the right to inform a third party.	No	That with the new legislation - notification should happen immediately after arrest.	In 2004, Police officers still exercised a wide discretion as regards notification of a relative of the detained person and they sometimes delayed such notification. Unable to find current data on this.	Family, Consulate, third party	Police officer	Orally or in writing	This was not dealt with.	Not known - needs further examination.	Not known.	The CPT expressed concern about unjustified delays in the accused being able to access this right.
Czech Republic	No	N/A	N/A	N/A	N/A	Many examples where accused brought into custody had to wait several hours before being informed they could contact their family.	Family, Consulate	Detainee	Not clear	Not known.	N/A	Not known.	To pass legislation to recognise this right.

Denmark	Not clear	S.2 Circular no. 12154 of 12 June 2001	Yes - the right to access a lawyer appears in s. 3 of the Circular.	No	Without undue delay.	A number complained had not been allowed to make contact.	Relatives or other relevant persons (such as the employer) - S. 2(2) of the Circular, Consulate	By the accused or by the police officer.	Orally or in writing	Compliance with procedures must be recorded. If person not allowed to contact family, the reason must also be recorded in reports.  However, reports sometimes omitted to mention whether the notification had taken place.  Several persons were unsure as to	Officer on duty or in charge of the investigation has an "unfettered discretion" to delay notification of custody, if it might obstruct investigation.	Disciplinary action for the officer if breaches the right.	That legal provisions be adopted so as the right is formally recognised.  That delay is circumscribed by law "made subject to appropriate safeguards (e.g reasons given by senior police officer or prosecutor).  That feedback is given to accused on whether
Estonia	Yes	Article 21 of the Constitution provides that detainees have the right to a notify a third party of their custody.  The amended Criminal Procedure Code, s.111 (10) states that a detainee is allowed to have a third person of their choice notified.  Detaine	Not known	No	Not known	A number complained had not been allowed to make contact.  Detainees are suppose to sign a form when notification been made - some entries left blank.	Family, Employer, third party	According to the old Criminal procedure code, notification could be done through "a preliminary investigator, prosecutor or the court" as long as it did not "damage criminal proceedings". The amended code does not seem to clarify who notifies the third p	Orally or in writing	This was not dealt with.	The right "may be restricted only in the cases and pursuant to procedure provided by law to combat a criminal offence or in the interests of ascertaining the truth in a criminal procedure"	Not known.	New Code makes explicit reference to right to notify.  That notification is rendered fully effective in custody.
Finland	Yes	Act on the Treatment of Persons in Police Custody (Act 841/2006)	Yes - under this provision, has the right to notify his lawyer.	Yes - generally well with concerns.	That once detained, notification to be made in a reasonable period of time and no later than before the end of custody.  Police not obliged to notify if custody does not exceed 12 hours (Chapter 2, Section 2 of the Act) and there are no compelling reasons	Most stated that were allowed to inform shortly after apprehension, or at the very latest at the beginning of the first formal interview with an investigating officer. However, there were a few reports about notification having been delayed significantly	family, consulate, employer, third party  Detainee can choose not to notify.	Detainee.	Orally or in writing	This was not dealt with.	Notification is restricted in instances where it may seriously impede or prejudice criminal investigation. This decision is decided by the head of the investigation.	Not known.	The delay in denying the detainee the right to be shortened substantially (e.g. to 48 hours).  The types of situation in where exercising the right is delayed is to be clarified.  That any delay notifying the detainee is subject to the approval of a senior

France	Yes	Article 63-2 of the Code de Procédure Pénale	Yes, the right to a lawyer is found in Art. 63-4.	Yes - but concerns over derogations	Any delay to this right no later than 3 hours after being apprehended.	Adhered to in practice.	Family	Detainee is allowed to telephone them.	Orally or in writing	N/A	Si l'officier de police judiciaire estime, en raison des nécessités de l'enquête, ne pas devoir faire droit à	Not known.	No further recommendations.
Germany	Yes	Section 114b of the Code of Criminal Procedure (StPO) - for those held under the Länder authorities.  For individuals held in preventative police custody under the Federal authorities, Federal Police Act (s 41, para.2) and the Act on the Federal Criminal	Yes - the right to access a lawyer are found in s.136, para. 1, s.137, para. 1, s.148, para. 1, and 163a, para. 4, of the StPO.	No	For detainees officially recognised as criminal suspects - the right applies from the moment of formal questioning.  For detainees that are provisionally apprehended, they do not have the right to notify until they have been brought before a judge (since	Numerous allegations from detainees that, whilst in the custody of the police, they had not been able at all - or at least not from the outset of their deprivation of liberty - to inform a close relative or a third person of their choice about their situa	Family, third party, Consulate.	Detainee	Orally or in writing	This was not dealt with.	Delay to notification can be made if police officers dealing with the case think that it may interfere with the investigation - this leaves a large discretion to the police.	Disciplinary action for the officer if breaches the right.	To ensure without further delay that all persons deprived of their liberty by any federal or Länder police service, for whatever reason, are granted the right to notify a close relative or third party of their choice about their situation as from the ver
Greece	Not clear	None - appears not to have a positive base in law, rather circumstances where right is restricted has a legal basis according to Article 105 of the Code of Criminal Procedure.	Not clear	Not definitive conclusion	Not clear.	Half of cases reviewed said they were informed of this right whereas the other half detainees said they had not been informed.	Close relative, a third party.	Detainee, does not explicitly mention whether police can notify.	N/A	This was not dealt with.	This right is subject to the Code of Criminal Procedure, the Correctional code and the "confidentiality of talks".	Not known.	To ensure that detainees have an effective right to notify a close relative or third party of their choice of their situation, as from the very outset of their deprivation of liberty.  Legal provisions adopted to specify the circumstances when the exercis

Hungary	Yes	S.128 (1) of Act XIX on Criminal Proceedings 1998 S. 18 of the Police Act	Yes - according to Section 47, Subsection (3) of the Code on Criminal Proceedings, defence counsel ought to be notified.	Yes - although with some misgivings.	Police must notify within 24 hours of custody.	Lots of discretion given to police officers (see derogations) . However, almost all interviewed said that third person had been notified (done mostly through police officer).	Family, Employer, Consulate, third party	Usually done by police officers.	Orally or in writing.	Poor feedback to detainees on whether notification had actually been made.  The government replies that police stations have been issued with guidelines on	Under S. 18 of the Police Act delay of notification can only occur if threat of escaping/hiding, alteration/destruction of evidence, of further criminal offences being committed, or a wide discretion of "to the extent which serves the safety of guarding	Not known.	That feedback given to detainees.  Clearer definition the circumstances in which notification of custody may exceptionally be delayed.  The legislation should provide for appropriate safeguards.
Ireland	Yes	S.5 Criminal Justice Act 1984	Yes - this section includes access to a lawyer.	Yes	As soon as practicable. Time and date of notification must be recorded.	Right from the outset.	Family, Employer, Consulate, third party	Detainee	Orally (telephone) or in writing (sending a letter).	N/A	Notification allowed if station manager ("member in charge") is satisfied that it will not hinder or delay the investigation of crime. Telephone calls may be listened and terminated if, as well as prohibiting the letter from being sent.	Not known.	No further recommendations.
Italy	Yes	Art. 387 of the criminal proceedings code.	Yes, right to a lawyer is stated in Art. 386.	No	That once formally arrested, family members are notified promptly.  Notification usually takes place once the detainee is formally arrested, rather than he has been taken into custody.  Individuals detained for reasons other than for a criminal offence ca	Even detainees formally arrested were deprived of rights (incl. notification) for several hours (or sometimes even more).	Family, third party	Police officer, not clear about detainee	Orally or in writing.	This was not dealt with.	Notification can be restricted by judicial authority, as circumscribed by law. Moreover, under exceptional circumstances of necessity and urgency, a delay of 96 hours can be authorised by a judge.	Not known.	Notification at the outset of deprivation of liberty for both those suspected of criminal offences and those who are legally obliged to be present at a police station.
Latvia	Yes	S. 62&63 of the Code of Criminal Procedure (CCP) - this relates to being informed of the right on the moment of arrest.  S. 253 of Administrative Violations Code (AVC) - concerns persons arrested for administrative violations.  Art. 266 of the Criminal Pr	Yes, Art. 266 of the Criminal Procedure Law also includes the right to access a lawyer.	No	"At the moment of actual arrest" for those detained under the CCP.	Notification in practice occurred when the detention protocol was drawn up, and not at the outset of deprivation of liberty.  A number of detainees complained of being withheld this right for to 24 hours.	Family, Employer, Consulate, educational institution	Police officer (particularly for those detained under the AVC), and the detainee (although not clear)	Orally or in writing.	This was not dealt with.	Not known - needs further examination.	Not known.	Ensure that right of notification is fully effective in practice with respect to all detainees from the very outset of their liberty.  Latvia looking into making amendments to their law to allow for notification from the outset.

Lithuania	Yes	S. 140 (4) of the Code of Criminal Procedure 2002	Not clear - further examination needed	No	Must be notified from the very outset of detention.  The Prosecutor is required to ensure that information about a person's detention is provided to a close relative of a detainee's choice (Article 107)	Notification occurred only when "protocol of apprehension" (forms detainees are requested to sign which police need before able to notify) was drawn up, which is up to 5 hours after first being detained.	Family, Consulate	Detainee, the Prosecutor (at his discretion if detainee does not choose to do so).	Orally or in writing	This was not dealt with.	The Prosecutor may refuse notification if detainee explains why such notification "can pose a threat to the security of his/her family".	Not known.	Ensure that right of notification is fully effective in practice with respect to all detainees from the very outset of their liberty.
Luxemburg	Yes	Article 39 (3) of the Code d'instruction criminelle	Yes - the right to access a lawyer appears in Article 39 (7)	Yes - generally well respected.	Must be notified from the very outset of detention.	Detainees were allowed to notify right from the outset.	Anyone: Family, Employer, Consulate, third party	Detainee	Orally (use of telephone is mentioned in the legislation) or in writing.	N/A	Can be refused or delayed if this is deemed necessary for the investigation. Decision is made a police officer (does not clarify rank) who has have the grounds of refusal in writing.  According to Government, these written reasons are	Not known.	That reasons for refusal be clearly stated subject to appropriate safeguards, and that it is authorised by a senior police officer independent to the case or a prosecutor.
Malta	Yes	Article 355AS of the Criminal Code	Yes - Article 355AT of the Criminal Code provides for the right of a detained person to consult in private with a lawyer.	Probably	Must be notified "without undue delay" however can be delayed for max. 6 hours (see derogation). No delay for minors.  Records kept of: i) Notifying the detainee of the right, ii) whether the detainee accessed this right, iv) details of person informed in	No particular reference to position in practice - assume that it may be working well.	Family, closed friend	Detainee	Orally or in writing	This was not dealt with.	Delay for investigative purposes, must be decided by a judge, on a case-by-case basis. The judge is first informed verbally of the delay by a senior police officer, giving reasons. After permission has been given, the officer files a note formally infor	Not known.	No further recommendations.

Netherlands	Yes	Article 27 (1) of the Police Service Guidelines, however this right can be restricted according to Article 62 (2) b of the Code of Criminal Procedure.	Not clear - further examination needed	No	Those held purely under Article 27 (1) without any restrictions of Article 62 (2) b have the right to notify, however it not clear what the terms are of this right.	In most cases, detainees claimed they were not given the right to inform their families or others .	Family	Detainee	Not detail given.	This was not dealt with.	Detainees held under Article 62 (2) b may have "all restrictions" imposed on them, whereby they are deprived of outside contact except for access to a lawyer. Such a regime may be imposed "in the interest of the investigation" by a public prosecutor, an a	Not known.	Article 62 (2) b needs to more precise and needs to be amended accordingly and calls upon the Netherlands authorities to give a proper follow-up to this recommendation.  That all detained persons not subjected to the restrictions of Article 62 (2) b are
Poland	Yes	S. 261 of Code of Criminal Procedure 1998	Yes this right appears in 1998 Code of Criminal Procedure	Yes - did not bring to light any particular problems.	Unknown - needs further examination.	Detainees had been informed of this right either at the time of their physical apprehension or soon afterwards, when the protocol of apprehension was drawn up.	Family , third party	Police officer	Orally or in writing.	Some detainees had doubts as to whether their family had been notified at all.	Not known - needs further examination.	Not known.	Provide detainees with feedback that relatives have been notified.
Portugal	Yes	Article 14 (4) of the Ministry of Interior - concerns individuals held in Public Security Police (PSP) and National Republican Guard (GNR) stations.  Article 250 (9) of the Code of Criminal Procedure (CCP) states that persons held for identification p	Yes - in the case of those held in a PSP and GNR, the right to contact a lawyer appears in Article 15 of Regulation 8684/99 (although notification only be telephone)	No	Not clear when in entitled to notify. Contact with family members must be kept on file.	A number of detainees claimed they had not been allowed to notify anyone. According to Portuguese Law Society, this practice is not uncommon.  That only those detainees who became formely recognised as suspects "arguidos" were allowed to notify.	Family, third party	Detainee	Orally - use of telephone.	This was not dealt with.	Not stated but are criticised as being vaguely defined.	Not known.	That the right to notify is put into practice and that notification to a third person other than family be used as an alternative.  Derogations should be clearly defined and strictly limited in time, and resort to them should be accompanied by appropriate
	No	Those held under Art. 211 (1) of the CCP - detainee subjected to incommunicado detention or restricted communication. This is issued by "a competent authority" and in writing.	N/A	N/A	No right.	N/A	N/A	N/A	N/A	N/A	N/A	N/A	Again to amend legislation provide this right.

Romania	Yes	Art. 137 (1) of Criminal Procedure Code  Art. 31 (1) (b) de la loi relative à la police 2002 guarantees this right for those under preliminary investigation.	Yes, the right to a lawyer is also stated in Art. 31 (1) (b) de la loi relative à la police 2002.	No	From the outset of detention (la Loi 275/2006)	Usually only allowed to inform after signed some sort of statement/legal document (procès verbal) (usually up several hours after first being detained) or worse, or after the the first hearing in front of a judge.  No measures had been formally taken to g	Family, third party	Not clear but likely to be detainee.	Orally or in writing.	This was not dealt with.	Can be delayed as an exception by a prosecutor who believes notification risks compromising the investigation.	Not known.	All detainees are allowed to notify from the outset of custody. That any delay in this right needs to be under strict time-limits and subject to written reasons.
Slovak Republic	Yes in certain cases	Article 19 (1) of the Police Act, with this right defined in the Annex.	Yes - this article covers both right to inform a third party and request defence counsel.	No.	Not all detainees but only those subject to Art. 19.	According to both detainees and police officers, in most cases notification of a third party was left to the discretion of the investigating police officer and, in practice, it was often denied.	Family, Consulate	Not clear	Not specified.	This was not dealt with.	Not known - needs further examination.	Not known.	All detainees notify a third party of their choice as from the outset of the deprivation of liberty is recognised in law and applied in practice. Any exceptions to this right should be clearly defined and strictly limited in time and be accompanied by app
Slovenia	Yes	Art. 48 of The Police Act and the Rules on Police Powers	Yes - this Article covers both right to inform a third party and request defence counsel.	Yes - in general although some concerns	Not clear in statute, but detainees should be allowed to notify between 30 to 90 mins since first being detained.	Nearly all detainees able to notify soon after detention, however there were complaints (incl. juveniles) that relatives only informed a day after first being apprehended.	Family, Consulate, third party	Detainee, although not explicit.	Not specified.	This was not dealt with.	Not known - needs further examination.	Not known.	All detainees allowed to notify from the very outset of their deprivation of liberty.
Spain	Yes	Need further clarification but right is covered by Article 520 (2) (d) of the Code of Criminal Procedure. For incommunicado detention - right restricted by s.527(b) of the Criminal Procedure Act - need further examination.	No - but need further examination.	Yes - for those held for ordinary criminal offences.	Those held incommunicado are delayed the right for up to 18 days.	Those held for ordinary offences were allowed to notify without delay and such requests had been properly recorded.	Family, Employer, Consulate, third party	Detainee or Police officer, although not explicit.	Orally or in writing.	This was not dealt with.	Can be delayed for incommunicado detention - usually terrorism offences.	Not known.	Further clarification of Spain's commitments to ensure notification of custody (including those held incommunicado) from the very outset of the deprivation of liberty.



Sweden	Yes	Section 21a of Chapter 24 of the Code of Judicial Procedure (CJP)  Section 17a of the Police Act - right for individuals who have been taken into temporary custody to notify close relatives.	Yes - the right to a lawyer appears in 10 of Chapter 23 of the CJP	No	"as soon as it may be done without harming the investigation"  Whether notification has been done or not is recorded.	Right is delayed until a person has been remanded in custody by a court (which may take up to 96 hours after arrival at the police station).  Police officers believe that notification is not a right and it depends on the decision of the prosecutor.	Family	It is not explicit who notifies.	Not specified.	This was not dealt with.	Delay is decided by the person in charge of the investigation. It should only be done if risk of collusion.	Not known.	Clear guidelines regarding possible delays in notification of custody; such delays should be exceptional rather than commonplace.  Detainees be provided with feedback on whether it has been possible to notify a close relative or other person of the fact
England and Wales	Yes	Code C of Police and Criminal Evidence Act 1984 - but this does not apply to those held under the Terrorism Act.	Yes - according to paragraph 3.1 (i) - the individual has the right to have someone informed of their right and (ii) to consult privately with a solicitor.	Yes - generally well respected.	As soon as practicable.  Detainee must sign custody record to confirm whether would like someone notified.	From the very outset of deprivation of liberty.	Family, Employer, Consulate, third party. If the person cannot be contacted the detainee may choose up to two alternatives. If they cannot be contacted, the person in charge of detention or the investigation has discretion to allow further attempts until	Detainee	Orally or in writing.	This is not dealt with.	Any delay or denial of the right should be proportionate and should last no longer than is necessary (Code C PACE 1984, para. 5.7A)	Action if in breach of the Code.	All custody officers be reminded of their duty to enable detained persons to exercise their rights throughout the period of their custody.

N.B – Further derogations for England Wales:

This right may be denied or delayed if if the detainee is in connection with an indictable offence and an officer of inspector rank or above has reasonable grounds to believe that

(i) their exercise will interfere/harm the offence or cause physical harm to people, (ii) lead to alerting other people suspected of having committed an indictable offence but not yet arrested for it; or iii) hinder the recovery of property obtained in consequence of the commission of such an offence.

2. These rights may also be delayed if the officer has reasonable grounds to believe that:

(i) the person detained for an indictable offence has benefited from their criminal conduct (decided in accordance with Part 2 of the Proceeds of Crime Act 2002); and (ii) the recovery of the value of the property constituting that benefit will be hindered by the exercise of either right.

These rights may be delayed for no longer than 36 hours. If the grounds cease to apply within this time, the detainee must, as soon as practicable, declare that want to notify, this must be recorded.