

Brussels, 26 June 2015 (OR. en)

10296/15

LIMITE

DROIPEN 72 COPEN 173 CODEC 934

NOTE

| From: | incoming LU Presidency |
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| To: | Delegations |
| No. prev. doc.: | 6603/15 DROIPEN 20 COPEN 62 CODEC 257 |
| Subject: | Proposal for a Directive of the European Parliament and of the Council on provisional legal aid for suspects or accused persons deprived of liberty and legal aid in European arrest warrant proceedings |
| | - Preparation for the 1st trilogue (14 July 2015, Brussels) |

On 6 May 2015, the LIBE Committee of the European Parliament adopted its orientation vote on the draft Directive¹. The LIBE Committee also agreed to enter into negotiations with the Council, which already adopted a general approach in March 2015 (6603/15).

The first trilogue on this file will take place on 14 July 2015 in Brussels.

In order to prepare for this trilogue, the Presidency would like to obtain the views of the Member States on the orientation vote adopted by the LIBE Committee. In particular, the Presidency would appreciate obtaining the views of the Member States on the EP amendments concerning the articles of the draft Directive and a selected number of related recitals, where appropriate.

To facilitate the discussions, the Presidency submits in the Annex a five column table with observations. Delegations are invited to express their views and to bring specific arguments and practical examples supporting the Council position that the Presidency could present to the EP.

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doc. A8-0165/2015

Abbreviations used:

GA = Council General Approach

CNS = Council

MS = Member States

EP = European Parliament

PRES = Presidency

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

| Commission proposal (doc. 17635/13) | Council GA (doc. 6603/15) | Orientation vote LIBE (A8-0165/2015) | Observations Presidency | Compromise proposal |
|---|---|--|----------------------------|---------------------|
| (400, 17,000, 10) | (400,000,10) | Title | Trestuciney | ргорозаг |
| Proposal for a Directive of the European Parliament and of the Council on provisional legal aid for suspects or accused persons deprived of liberty and legal aid in European arrest warrant proceedings | Proposal for a Directive of the European Parliament and of the Council on provisional legal aid for suspects or accused persons deprived of liberty and legal aid in European arrest warrant proceedings | Proposal for a Directive of the European parliament and of the Council on () legal aid for suspects or accused persons () and legal aid in European arrest warrant proceedings (AM.1) | | |
| warrant processings | proceedings | Recitals | | |
| | | (-1) Article 6(3)(c) of the European Convention for the Protection of Human Rights and Fundamental Freedoms (ECHR) and Article 14(3)(d) of the International Covenant on Civil and Political Rights, recognise the right to legal aid for those who do not have sufficient means themselves to pay for legal | | |

| Commission proposal | Council GA | Orientation vote LIBE | Observations | Compromise |
|-------------------------------|---------------------------------|--|--------------|------------|
| (doc. 17635/13) | (doc. 6603/15) | (A8-0165/2015) | Presidency | proposal |
| | | assistance, where the | • | |
| | | interests of justice so | | |
| | | require. (AM.2) | | |
| | | (-1a) The third paragraph of | | |
| | | Article 47 of the Charter of | | |
| | | Fundamental Rights of the | | |
| | | European Union ('the | | |
| | | Charter') provides that legal | | |
| | | aid is to be made available to | | |
| | | those who lack sufficient | | |
| | | resources in so far as such | | |
| | | aid is necessary to ensure | | |
| | | effective access to justice. | | |
| | | (AM.3) | | |
| | | (-1b) The United Nations | | |
| | | Principles and Guidelines on | | |
| | | Access to Legal Aid in | | |
| | | Criminal Justice Systems ^{1a} | | |
| | | provide for a comprehensive | | |
| | | framework on the right to | | |
| | | legal aid. (AM.4) | | |
| | | 1a. Adopted by the General | | |
| | | Assembly of the United | | |
| | | Nations through its | | |
| | | Resolution A/Res/67/187 of | | |
| | | 20 December 2012. | | |
| (1) The purpose of this | (1) [transferred to recital 4a] | (1) The purpose of this | | |
| Directive is to ensure the | (4a) This Directive is | Directive is to ensure the | | |
| effectiveness of the right of | concerned with the second | effectiveness of the right of | | |

| Commission proposal | Council GA | Orientation vote LIBE | Observations | Compromise |
|---|--|---|--------------|------------|
| (doc. 17635/13) | (doc. 6603/15) | (A8-0165/2015) | Presidency | proposal |
| access to a lawyer by providing assistance by the Member States for persons deprived of liberty at an early stage in the criminal proceedings and for requested persons in surrender procedures pursuant to Council Framework Decision 2002/584/JHA ² (European arrest warrant proceedings). | part of measure C of the Roadmap, regarding "legal aid". The purpose of this Directive is to ensure the effectiveness of the right of access to a lawyer as provided under Directive 2013/48/EU by making available, if the persons concerned have requested so, assistance by a lawyer funded by the Member States for persons deprived of liberty at an early stage of the criminal proceedings and for requested persons in surrender procedures pursuant to Council Framework Decision 2002/584/JHA ('European arrest warrant proceedings'), | access to a lawyer as provided under Directive 2013/48/EU of the European Parliament and of the Council by making available assistance by a lawyer funded by the Member States for suspects or accused persons and for requested persons in surrender proceedings pursuant to Council Framework Decision 2002/584/JHA (European arrest warrant proceedings). The scope of this Directive is determined, in particular, by the relevant provisions of Directive 2013/48/EU. (AM.5) | Presidency | proposal |
| | who have been arrested in the executing state. | | | |
| | (1a) Article 47, third | (-1a) The third paragraph of | | |
| | subparagraph, of the | Article 47 of the Charter of | | |
| | Charter of Fundamental | Fundamental Rights of the | | |
| | Rights of the European | European Union ('the | | |

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² Council Framework Decision 2002/584/JHA of 13 June 2002 on the European arrest warrant and the surrender procedures between Member States (OJ L 190, 18.7.2002, p.

| Commission proposal | Council GA | Orientation vote LIBE | Observations | Compromise |
|----------------------------|--------------------------------|--------------------------------|--------------|------------|
| (doc. 17635/13) | (doc. 6603/15) | (A8-0165/2015) | Presidency | proposal |
| | Union (the Charter), | Charter') provides that legal | • | • • |
| | Article 6(3)(c) of the | aid is to be made available to | | |
| | European Convention for | those who lack sufficient | | |
| | the Protection of Human | resources in so far as such | | |
| | Rights and Fundamental | aid is necessary to ensure | | |
| | Freedoms (the ECHR) and | effective access to justice. | | |
| | Article 14(3)(d) of the | (AM.3) | | |
| | International Covenant on | | | |
| | Civil and Political Rights | | | |
| | (the ICCPR) enshrine the | | | |
| | right to legal aid in | | | |
| | criminal proceedings under | | | |
| | the conditions mentioned in | | | |
| | these provisions. | | | |
| | See recital -1a) new | | | |
| | (AM3) of the EP report | | | |
| | (1b) The Union has set itself | | | |
| | the objective of maintaining | | | |
| | and developing an area of | | | |
| | freedom, security and | | | |
| | justice. According to the | | | |
| | Presidency conclusions of | | | |
| | the European Council in | | | |
| | Tampere of 15 and 16 | | | |
| | October 1999, and in | | | |
| | particular point (33) | | | |
| | thereof, the principle of | | | |
| | mutual recognition of | | | |
| | judgments and other | | | |
| | decisions of judicial | | | |

| Commission proposal | Council GA | Orientation vote LIBE | Observations | Compromise |
|----------------------------|--------------------------------|-----------------------|--------------|------------|
| (doc. 17635/13) | (doc. 6603/15) | (A8-0165/2015) | Presidency | proposal |
| | authorities should become | | | |
| | the cornerstone of judicial | | | |
| | cooperation in civil and | | | |
| | criminal matters within the | | | |
| | Union because enhanced | | | |
| | mutual recognition and the | | | |
| | necessary approximation of | | | |
| | legislation would facilitate | | | |
| | cooperation between | | | |
| | competent authorities and | | | |
| | the judicial protection of | | | |
| | individual rights. | | | |
| | See AMs 6, 7 and 8 to | | | |
| | recitals 2a), 3 and 3a) of the | | | |
| | EP report | | | |
| | (1c) Pursuant to Article | | | |
| | 82(1) of the Treaty on the | | | |
| | Functioning of the | | | |
| | European Union (TFEU), | | | |
| | 'judicial cooperation in | | | |
| | criminal matters in the | | | |
| | Union shall be based on the | | | |
| | principle of mutual | | | |
| | recognition of judgments | | | |
| | and judicial decisions'. | | | |
| | (1d) The implementation of | | | |
| | the principle of mutual | | | |
| | recognition of decisions in | | | |
| | criminal matters | | | |
| | presupposes that Member | | | |

| Commission proposal | Council GA | Orientation vote LIBE | Observations | Compromise |
|----------------------------|---------------------------------|-----------------------------|--------------|------------|
| (doc. 17635/13) | (doc. 6603/15) | (A8-0165/2015) | Presidency | proposal |
| | States trust in each other's | | · · | |
| | criminal justice systems. | | | |
| | The extent of the mutual | | | |
| | recognition is very much | | | |
| | dependent on a number of | | | |
| | parameters, which include | | | |
| | mechanisms for | | | |
| | safeguarding the rights of | | | |
| | suspects or accused persons | | | |
| | and common minimum | | | |
| | standards necessary to | | | |
| | facilitate the application of | | | |
| | the principle of mutual | | | |
| | recognition. | | | |
| | (1e) Although the Member | | | |
| | States are parties to the | | | |
| | European Convention for | | | |
| | the Protection of Human | | | |
| | Rights and Fundamental | | | |
| | Freedoms and the | | | |
| | International Covenant on | | | |
| | Civil and Political Rights, | | | |
| | experience has shown that | | | |
| | this in itself does not always | | | |
| | provide a sufficient degree | | | |
| | of trust in the criminal | | | |
| | justice systems of other | | | |
| | Member States. | | | |
| (2) By establishing | (2) [transferred to recital 4b] | (2) By establishing minimum | | |
| minimum rules on the | (4b) By establishing | rules on the protection of | | |

| Commission proposal | Council GA | Orientation vote LIBE | Observations | Compromise |
|------------------------------|--|---------------------------------|--------------|------------|
| (doc. 17635/13) | (doc. 6603/15) | (A8-0165/2015) | Presidency | proposal |
| protection of procedural | minimum rules on the | procedural rights of suspects | | |
| rights of suspects or | protection of procedural | or accused persons, this | | |
| accused persons, this | rights of suspects or accused | Directive should strengthen | | |
| Directive should strengthen | persons, this Directive should | the trust of Member State in | | |
| the trust of Member State in | strengthen the trust of | criminal justice systems of | | |
| criminal justice systems of | Member State in criminal | other Member States and can | | |
| other Member States and | justice systems of other | thus help improve mutual | | |
| can thus help improve | Member States and can thus | recognition of decisions in | | |
| mutual recognition of | help to improve mutual | criminal matters. | | |
| decisions in criminal | recognition of decisions in | | | |
| matters. | criminal matters. | | | |
| | (2a) On 30 November 2009, | (3a) On 30 November 2009, | | |
| | the Council adopted a | the Council adopted a | | |
| | Resolution on a Roadmap | resolution on a Roadmap for | | |
| | for strengthening the | strengthening procedural | | |
| | procedural rights of | rights of suspected or | | |
| | suspected or accused | accused persons in criminal | | |
| | persons in criminal | proceedings. It proposed to | | |
| | proceedingss ('the | introduce several legislative | | |
| | Roadmap'). ³ Taking a step- | initiatives including the right | | |
| | by-step approach, the | to the assistance of a legal | | |
| | Roadmap calls for the | adviser and legal aid in | | |
| | adoption of measures | criminal proceedings | | |
| | regarding the right to | (measure C).(AM 8). | | |
| | translation and | | | |
| | interpretation (measure A), | | | |
| | the right to information on | | | |
| | rights and information | | | |

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| Commission proposal | Council GA | Orientation vote LIBE | Observations | Compromise |
|----------------------------|---|-----------------------------|--------------|------------|
| (doc. 17635/13) | (doc. 6603/15) | (A8-0165/2015) | Presidency | proposal |
| , | about the charges (measure | | • | |
| | B), the right to legal advice | | | |
| | and legal aid (measure C), | | | |
| | the right to communicate | | | |
| | with relatives, employers | | | |
| | and consular authorities | | | |
| | (measure D), and special | | | |
| | safeguards for suspects or | | | |
| | accused persons who are | | | |
| | vulnerable (measure E). See AM 8 to reciatl 2a of | | | |
| | the EP report | | | |
| | the Er Teport | (2a) In accordance with | | |
| | | Article 82(2) of the Treaty | | |
| | | on the Functioning of the | | |
| | | European Union (TFEU), to | | |
| | | the extent to that it is | | |
| | | necessary to facilitate the | | |
| | | mutual recognition of | | |
| | | judgments and judicial | | |
| | | decisions and police and | | |
| | | judicial cooperation in | | |
| | | criminal matters having a | | |
| | | cross-border dimension, the | | |
| | | European Parliament and | | |
| | | the Council may, by means | | |
| | | of directives adopted in | | |
| | | accordance with the | | |
| | | ordinary legislative | | |
| | | procedure, establish | | |

| Commission proposal | Council GA | Orientation vote LIBE | Observations | Compromise |
|-------------------------------------|--|-------------------------------------|--------------|------------|
| (doc. 17635/13) | (doc. 6603/15) | (A8-0165/2015) | Presidency | proposal |
| | | minimum rules. Such rules | | |
| | | are to take into account the | | |
| | | differences between the legal | | |
| | | traditions and systems of the | | |
| | | Member States. They are to | | |
| | | cover, in particular, the | | |
| | | rights of individuals in | | |
| | | criminal procedure. | | |
| | | (AM. 6) | | |
| (3) The Stockholm | (3) () On 11 December | (3) The Stockholm | | |
| Programme ⁴ put a strong | 2009, the European Council | Programme ² put a strong | | |
| focus on the strengthening | welcomed the Roadmap | focus on the strengthening of | | |
| of the rights of individuals | and made it part of the | the rights of individuals in | | |
| in criminal proceedings. In | Stockholm programme - | criminal proceedings. In its | | |
| its point 2.4, the European | An open and secure Europe | point 2.4, the European | | |
| Council invited the | serving and protecting | Council invited the | | |
| Commission to put forward | citizens (point 2.4). ⁶ The | Commission to put forward | | |
| proposals, setting out a step | European Council invited | proposals, setting out a step | | |
| by step approach ⁵ to | the Commission to put | by step approach ³ to | | |
| strengthening the rights of | forward the foreseen | strengthening the rights of | | |
| suspects or accused | proposals in the Roadmap | suspects or accused persons, | | |
| persons. | for its swift | in particular the right to | | |
| | implementation, on the | legal advice and legal aid | | |
| | conditions laid down | (measure C). (AM. 7) | | |
| | therein, to examine further | | | |
| | elements of minimum | | | |

OJ C 115, 4.5.2010, p. 1 OJ C 291, 4.12.2009, p. 1 OJ C 115, 4.5.2010, p.1.

| Commission proposal | Council GA | Orientation vote LIBE | Observations | Compromise |
|----------------------------|-------------------------------|---------------------------------|--------------|------------|
| (doc. 17635/13) | (doc. 6603/15) | (A8-0165/2015) | Presidency | proposal |
| | procedural rights for | | | |
| | suspects and accused | | | |
| | persons, and to assess | | | |
| | whether other issues, for | | | |
| | instance the presumption of | | | |
| | innocence, need to be | | | |
| | addressed, to promote | | | |
| | better cooperation in this | | | |
| | area. | | | |
| | | See recital 2a of the GA | | |
| | | | | |
| | | (3a) On 30 November 2009, | | |
| | | the Council adopted a | | |
| | | resolution on a Roadmap for | | |
| | | strengthening procedural | | |
| | | rights of suspected or | | |
| | | accused persons in criminal | | |
| | | proceedings. It proposed to | | |
| | | introduce several legislative | | |
| | | initiatives including the right | | |
| | | to the assistance of a legal | | |
| | | adviser and legal aid in | | |
| | | criminal proceedings | | |
| | (1) | (measure C).(AM 8) | | |
| (4) Three measures on | (4) Three measures on | (4) Three measures on | | |
| procedural rights in | procedural rights in criminal | procedural rights in criminal | | |
| criminal proceedings have | proceedings have been | proceedings have been | | |
| been adopted to date, | adopted to date, namely | adopted to date, namely | | |
| namely Directive | Directive 2010/64/EU of the | Directive 2010/64/EU of the | | |
| 2010/64/EU of the | European Parliament and of | European Parliament and of | | |

| Commission proposal | Council GA | Orientation vote LIBE | Observations | Compromise |
|--|---|--|--------------|------------|
| (doc. 17635/13) | (doc. 6603/15) | (A8-0165/2015) | Presidency | proposal |
| European Parliament and of | the Council of 20 October | the Council ⁴ on the right to | | |
| the Council ⁷ , Directive | 2010 on the right to | interpretation and | | |
| 2012/13/EU of the | interpretation and | <i>translation</i> , Directive | | |
| European Parliament and of | translation in criminal | 2012/13/EU of the European | | |
| the Council ⁸ and Directive | proceedings ¹⁰ , Directive | Parliament and of the | | |
| 2013/48/EU of the | 2012/13/EU of the European | Council ⁵ on the right to | | |
| European Parliament and | Parliament and of the | <i>information</i> and Directive | | |
| the Council. ⁹ | Council of 22 May 2012 on | 2013/48/EU on the right to | | |
| | the right to information in | access to a lawyer and on the | | |
| | criminal proceedings ¹¹ , and | right to have a third party | | |
| | Directive 2013/48/EU of the | informed upon deprivation | | |
| | European Parliament and of | of liberty and to | | |
| | the Council of 22 October | communicate with third | | |
| | 2013 on the right of access | persons and with consular | | |
| | to a lawyer in criminal | authorities while deprived of | | |
| | proceedings and in | liberty.(AM 9) | | |
| | European arrest warrant | | | |
| | proceedings, and on the | | | |

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

⁸ Directive 2012/13/EU of the European Parliament and of the Council of 22 May 2012 on the right to information in criminal proceedings (OJ L 142, 1.6.2012, p. 1.)

⁹ Directive 2013/48/EU of the European Parliament and of the Council of 22 October 2013 on the right of access to a lawyer in criminal proceedings and in European arrest warrant proceedings, and on the right to have a third party informed upon deprivation of liberty and to communicate with third persons and with consular authorities while deprived of liberty (OJ L 294, 6.11.2013, p. 1).

¹⁰ Directive 2010/64/EU of the European Parliament and of the Council of 20 October 2010 on the right to interpretation and translation in criminal proceedings (OJ L 280, 26.10.2010, p. 1).

¹¹ Directive 2012/13/EU of the European Parliament and of the Council of 22 May 2012 on the right to information in criminal proceedings (OJ L 142, 1.6.2012, p. 1.)

| Commission proposal | Council GA | Orientation vote LIBE | Observations | Compromise |
|----------------------------|------------------------------------|-----------------------|--------------|------------|
| (doc. 17635/13) | (doc. 6603/15) | (A8-0165/2015) | Presidency | proposal |
| | right to have a third party | | - | |
| | informed upon deprivation | | | |
| | of liberty and to | | | |
| | communicate with third | | | |
| | persons and with consular | | | |
| | authorities while deprived | | | |
| | of liberty. ¹² | | | |
| | See recital 1 of COM | | | |
| | proposal and AM 5 to | | | |
| | Recital 1 of the EP report | | | |
| | (4a) This Directive is | | | |
| | concerned with the second | | | |
| | part of measure C of the | | | |
| | Roadmap, regarding "legal | | | |
| | aid". The purpose of this | | | |
| | Directive is to ensure the | | | |
| | effectiveness of the right of | | | |
| | access to a lawyer as | | | |
| | provided under Directive | | | |
| | 2013/48/EU by making | | | |
| | available, if the persons | | | |
| | concerned have requested | | | |
| | so, assistance by a lawyer | | | |
| | funded by the Member | | | |
| | States for persons deprived of | | | |
| | liberty at an early stage of the | | | |

¹² Directive 2013/48/EU of the European Parliament and of the Council of 22 October 2013 on the right of access to a lawyer in criminal proceedings and in European arrest warrant proceedings, and on the right to have a third party informed upon deprivation of liberty and to communicate with third persons and with consular authorities while deprived of liberty (OJ L 294, 6.11.2013, p. 1).

| Commission proposal | Council GA | Orientation vote LIBE | Observations | Compromise |
|------------------------------|--------------------------------|------------------------------|-------------------------------|------------|
| (doc. 17635/13) | (doc. 6603/15) | (A8-0165/2015) | Presidency | proposal |
| | criminal proceedings and for | | | |
| | requested persons in | | | |
| | surrender procedures | | | |
| | pursuant to Council | | | |
| | Framework Decision | | | |
| | 2002/584/JHA ('European | | | |
| | arrest warrant proceedings'), | | | |
| | who have been arrested in | | | |
| | the executing state. | | | |
| | See recital 2 of COM | | | |
| | proposal | | | |
| | (4b) By establishing | | | |
| | minimum rules on the | | | |
| | protection of procedural | | | |
| | rights of suspects or accused | | | |
| | persons, this Directive should | | | |
| | strengthen the trust of | | | |
| | Member State in criminal | | | |
| | justice systems of other | | | |
| | Member States and can thus | | | |
| | help to improve mutual | | | |
| | recognition of decisions in | | | |
| | criminal matters. | | | |
| (5) Legal aid should cover | [Transferred to recital 7b] | (5) Legal aid should cover | This recital is linked to the | |
| the costs of the defence and | (7b) Legal aid should cover | the costs of the defence and | definition of legal aid under | |
| the proceedings for suspects | the costs of the defence () | the proceedings for suspects | Article 3 (a). The GA recital | |
| or accused persons in | for suspects or accused | or accused persons in | is therefore adjusted to the | |
| criminal proceedings and | persons in criminal | criminal proceedings and | redrafted definition, thereby | |
| requested persons in | proceedings and requested | requested persons in | excluding the cost of the | |
| European arrest warrant | persons in European arrest | European arrest warrant | proceedings. | |

| Commission proposal | Council GA | Orientation vote LIBE | Observations | Compromise |
|-------------------------------|----------------------|-----------------------|--|------------|
| (doc. 17635/13) | (doc. 6603/15) | (A8-0165/2015) | Presidency | proposal |
| proceedings. | warrant proceedings. | proceedings. | MSs are invited to bring up additional arguments for this solution that could be usefully presented to the EP. | |
| (6) The scope and content | [deleted] | [deleted](AM 10) | | |
| of the right to access to a | | | | |
| lawyer are set out in | | | | |
| Directive 2013/48/EU. A | | | | |
| suspect or accused person in | | | | |
| criminal proceedings should | | | | |
| have the right of access to a | | | | |
| lawyer from the time when | | | | |
| they are made aware, by | | | | |
| official notification or | | | | |
| otherwise, by the competent | | | | |
| authorities, that they are | | | | |
| suspected or accused of | | | | |
| having committed a | | | | |
| criminal offence, and | | | | |
| irrespective of whether they | | | | |
| are deprived of liberty. That | | | | |
| right applies until the | | | | |
| conclusion of the | | | | |
| proceedings, which is | | | | |
| understood to mean the | | | | |
| final determination of the | | | | |
| question whether the | | | | |
| suspect or accused person | | | | |
| has committed the offense, | | | | |

| Commission proposal | Council GA | Orientation vote LIBE | Observations | Compromise |
|------------------------------|------------------------------|--|--|------------|
| (doc. 17635/13) | (doc. 6603/15) | (A8-0165/2015) | Presidency | proposal |
| including where applicable, | | | | |
| sentencing and the | | | | |
| resolution of any appeal. | | | | |
| | | (6a) In accordance with | The issue of the necessary | |
| | | Directive 2013/48/EU, legal | practical arrangements for | |
| | | aid is provided in the | the effective exercise of the | |
| | | Member States in | rights granted under this | |
| | | accordance with the Charter | Directive is addressed under | |
| | | and the ECHR. Where | recital 12e of the GA in a much more elaborate | |
| | | suspects or accused persons are deprived of liberty, | manner. In this respect it | |
| | | Member States should make | does not seem necessary to | |
| | | the necessary arrangements | repeat the respective | |
| | | to ensure that such persons | provisions from the | |
| | | are in a position to exercise | Directive on A2L. | |
| | | their right of access to a | | |
| | | lawyer effectively, including | | |
| | | by arranging for the | | |
| | | assistance of a lawyer where | | |
| | | the persons concerned do | | |
| | | not have one, unless they | | |
| | | have waived that right. | | |
| | | Under this directive, such | | |
| | | arrangements could include | | |
| | | those on legal aid if | | |
| | (7) 0 0 1 0 1 | applicable. (AM. 11) | | |
| (7) One of the fundamental | (7) One of the fundamental | [deleted](AM. 12) | | |
| features of a fair trial, as | features of a fair trial, as | | | |
| stated by the European | stated by the European Court | | | |
| Court of Human Rights | of Human Rights ("ECtHR") | | | |

| Commission proposal | Council GA | Orientation vote LIBE | Observations | Compromise |
|------------------------------|---------------------------------|-----------------------|------------------------------|------------|
| (doc. 17635/13) | (doc. 6603/15) | (A8-0165/2015) | Presidency | proposal |
| ("ECtHR") is that everyone | is that everyone charged with | | | |
| charged with a criminal | a criminal offence is | | | |
| offence is effectively | effectively defended by a | | | |
| defended by a lawyer, | lawyer, assigned officially if | | | |
| assigned officially if need | need be. The fairness of | | | |
| be. The fairness of criminal | criminal proceedings requires | | | |
| proceedings requires that a | that a suspect should be | | | |
| suspect should be granted | granted access to legal | | | |
| access to legal assistance | assistance from the moment | | | |
| from the moment of | of deprivation of liberty. | | | |
| deprivation of liberty. | | | | |
| | (7a) Legal aid should be | | See observations in relation | |
| | understood as a state | | to Article 3(d) | |
| | ensured assistance provided | | | |
| | by any person who, in | | | |
| | accordance with national | | | |
| | law, is qualified and | | | |
| | entitled as a lawyer as | | | |
| | described in Directive | | | |
| | 2013/48/EU. | | | |
| | See recital 5 | | | |
| | (7b) Legal aid should cover | | | |
| | the costs of the defence () | | | |
| | for suspects or accused | | | |
| | persons in criminal | | | |
| | proceedings and requested | | | |
| | persons in European arrest | | | |
| (8) Directive 2013/48/EU | warrant proceedings. [deleted] | [deleted] (AM 13) | | |
| provides that in cases where | [ueleled] | [ueieieu] (AM 13) | | |
| provides that in cases where | | | | |

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| suspects or accused persons | | | | |
| are deprived of liberty, | | | | |
| Member States should make | | | | |
| the necessary arrangements | | | | |
| to ensure that they are in a | | | | |
| position to exercise | | | | |
| effectively their right of | | | | |
| access to lawyer, unless | | | | |
| they have waived this right. | | | | |
| (9) In order for suspects or | (9) In order for suspects or | (9) In order for suspects or | The recital is linked to | |
| accused persons who are | accused persons who are | accused persons () to be in | Article 4 on provisional | |
| deprived of liberty to be in a | deprived of liberty to be in a | a position to exercise | legal aid. The proposed | |
| position to exercise | position to exercise | effectively the right of access | amendment is not consistent | |
| effectively the right of | effectively the right of access | to a lawyer at the early stages | with the respective | |
| access to a lawyer at the | to a lawyer at the early stages | of the proceedings, they | provision in the operative | |
| early stages of the | of the proceedings, they | should not have to wait for | part, as suggested by the | |
| proceedings, they should | should not have to wait for | access to a lawyer pending | EP (Article 4 (2)) and with | |
| not have to wait for access | access to a lawyer pending | the processing of the | the temporal scope of this | |
| to a lawyer pending the | the processing of the | application for legal aid and | provision as originally | |
| processing of the | application for ordinary | the assessment of the | proposed by the COM and | |
| application for legal aid and | legal aid and the assessment | eligibility criteria for legal | maintained in the GA. | |
| the assessment of the | of the eligibility criteria for | aid. Member States should | In addition, extending the | |
| eligibility criteria for legal | ordinary legal aid. Member | therefore ensure that effective | application of this provision | |
| aid. Member States should | States should therefore | provisional legal aid is | to any procedural steps that | |
| therefore ensure that | ensure that when the person | available without undue | should be carried out in the | |
| effective provisional legal | is deprived of liberty | delay () before <i>the</i> | presence of a lawyer, in | |
| aid is available without | effective provisional legal aid | <i>performance of</i> any | particular under national | |
| undue delay after the | is available without undue | procedural step which, | legislation is not compatible | |
| deprivation of liberty and | delay and at the latest before | under national or Union | with the minimum standard | |
| before any questioning, and | questioning. It should be | law, has to be carried out in | nature of this Directive and | |

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| it should be available at | available () until the | the presence of a lawyer, and | does not serve the objective | |
| least until the competent | person concerned is | it should be available at least | of approximation of | |
| authority has taken the | released or until the | until the competent authority | national legislation by way | |
| decision on legal aid and, in | competent authority has | has taken the decision on | of establishing minimum | |
| cases of full or partial | taken the final decision on | legal aid and, in cases of full | rules to this effect as | |
| rejection, this decision has | ordinary legal aid and, () | or partial rejection, this | provided under the Treaties. | |
| become final, or, where the | where the application for | decision has become final, or, | | |
| application for legal aid is | ordinary legal aid is granted, | where the application for | | |
| granted, the appointment of | the appointment of the | legal aid is granted, the | | |
| the lawyer by the competent | lawyer by the competent | appointment of the lawyer by | | |
| authority has taken effect. | authority has taken effect or | the competent authority has | | |
| | in cases of () rejection, | taken effect. (AM 14) | | |
| | this decision has become | | | |
| | final. A decision on | | | |
| | ordinary legal aid should | | | |
| | be considered to be final | | | |
| | when any right to appeal or | | | |
| | review that decision has | | | |
| | been exhausted. | | | |
| | (9a) In respect of certain | (13a) In some Member | | |
| | minor offences, such as | States certain minor | | |
| | traffic offences, offences in | offences, in particular minor | | |
| | relation to general | traffic offences, minor | | |
| | municipal regulations or | offences in relation to | | |
| | public order offences it | general municipal | | |
| | would not be proportionate | regulations and minor | | |
| | to require that the | public order offences, are | | |
| | competent authorities | considered to be criminal | | |
| | should also ensure the right | offences. In such situations, | | |
| | to provisional legal aid. | it would be unreasonable to | | |

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| | Therefore, where according | require that the competent | | |
| | to the national law an | authorities ensure all the | | |
| | authority other than a | rights under this Directive. | | |
| | court having jurisdiction in | Where the law of a Member | | |
| | criminal matters has | State provides in respect of | | |
| | competence for imposing | minor offences that | | |
| | sanctions regarding minor | deprivation of liberty cannot | | |
| | offences, provided the | be imposed as a sanction, | | |
| | imposition of such a | this Directive should | | |
| | sanction may be appealed | therefore apply only to the | | |
| | or otherwise referred to a | proceedings before a court | | |
| | court having jurisdiction in | having jurisdiction in | | |
| | criminal matters, or where | criminal matters. | | |
| | deprivation of liberty | | | |
| | cannot be imposed as a | (13b) The scope of this | | |
| | sanction in respect of such | Directive in respect of | | |
| | minor offences, the right to | certain minor offences | | |
| | provisional legal aid, as laid | should not affect the | | |
| | down by this directive, | obligations of Member | | |
| | should not apply. | States under the ECHR to | | |
| | See Recital 13a) and 13b) | ensure the right to a fair | | |
| | new of the EP Position | trial including obtaining | | |
| | (AMs 21 and 22) | legal assistance from a | | |
| | | lawyer. | | |
| | (9b) References in this | | | |
| | Directive to suspects or | | | |
| | accused persons who are | | | |
| | deprived of liberty should | | | |
| | be understood to refer to | | | |
| | any situation where, in the | | | |

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| | course of criminal | | _ | |
| | proceedings, suspects or | | | |
| | accused persons are | | | |
| | deprived of liberty within | | | |
| | the meaning of Article | | | |
| | 5(1)(c) of the ECHR, as | | | |
| | interpreted by the case-law | | | |
| | of the ECtHR. | | | |
| | (9c) Certain situations may | | | |
| | lead to short term | | | |
| | restrictions of the liberty of | | | |
| | the person concerned. In | | | |
| | these situations the person | | | |
| | might not be expected or | | | |
| | required to exercise | | | |
| | actively his rights of | | | |
| | defence, for example in the | | | |
| | context of questioning the | | | |
| | sole purpose of which is to | | | |
| | identify the person | | | |
| | concerned or to verify the | | | |
| | possession of weapons or | | | |
| | similar safety issues. Such | | | |
| | situations should not be | | | |
| | considered as deprivation | | | |
| | of liberty for the purposes | | | |
| | of this Directive. | | | |
| | (9d) Lawful arrest or | | | |
| | detention of a suspect or | | | |
| | accused person for non- | | | |

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| | compliance with a lawful | | | |
| | order in order to secure the | | | |
| | fulfilment of any obligation | | | |
| | prescribed by law, within | | | |
| | the meaning of Article | | | |
| | 5(1)(b) of the ECHR should | | | |
| | not fall within the scope of | | | |
| | this Directive. For instance, | | | |
| | where in case of non- | | | |
| | compliance with a lawful | | | |
| | order to appear, a person is | | | |
| | forcefully brought to a | | | |
| | competent law enforcement | | | |
| | or judicial authority, this | | | |
| | Directive should not apply. | | | |
| | Once the person has been | | | |
| | brought before the | | | |
| | competent authority and if | | | |
| | the criteria for the | | | |
| | application of the Directive | | | |
| | are fulfilled, the person | | | |
| | concerned should be | | | |
| | entitled to all rights | | | |
| | provided in this Directive. | (0) (TI : D: (1 1 1 1 | | |
| | | (9a) This Directive should | | |
| | | allow for differences in the | | |
| | | Member States' legal aid | | |
| | | systems. Each Member State | | |
| | | should be responsible for the | | |
| | | granting of legal aid. Legal | | |

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| | | aid should be granted subject to an assessment of the financial means of the applicant ('means test') and/or of whether it is in the interests of justice to provide legal aid in the case concerned ('merits test'). (AM. 15) | | |
| (10) The Member States should ensure that provisional legal aid is provided to the extent necessary and is not limited in a way that prevents the suspects or accused persons from exercising effectively the right of access to a lawyer as provided for in particular in Article 3(3) of Directive 2013/48/EU. | (10) The Member States should ensure that provisional legal aid is provided to the extent necessary and is not limited in a way that prevents suspects or accused persons from exercising effectively the right of access to a lawyer as provided for in particular in Article 3(3) of Directive 2013/48/EU. As regards investigative or evidence-gathering acts, that Article provides that suspects or accused persons should, as a minimum, have the right for their lawyer to attend three types of such acts, namely identity parades, confrontations | (10) The Member States should ensure that () legal aid is provided to the extent necessary and is not limited in a way that prevents the suspects or accused persons from exercising effectively the right of access to a lawyer as provided for in particular in Article 3(3) of Directive 2013/48/EU. (AM 16) | | |

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| | and reconstructions of the | | • | |
| | scene of a crime, where | | | |
| | those acts are provided for | | | |
| | under national law and if | | | |
| | the suspect or accused | | | |
| | person is required or | | | |
| | permitted to attend the act | | | |
| | concerned. Those minimum | | | |
| | acts do not include other | | | |
| | investigative or evidence- | | | |
| | gathering acts in the | | | |
| | criminal proceedings, such | | | |
| | as obtaining a blood or | | | |
| | DNA sample, fingerprints | | | |
| | or making an alcohol test. | | | |
| | Member States may | | | |
| | provide for the right to | | | |
| | provisional legal aid for | | | |
| | such investigative or | | | |
| | evidence-gathering acts in | | | |
| | accordance with national | | | |
| | law. | | | |
| | (10a) Member States | | | |
| | should ensure that when | | | |
| | the persons concerned are | | | |
| | deprived of liberty, they are | | | |
| | granted provisional legal | | | |
| | aid without undue delay | | | |
| | and at the latest before | | | |
| | questioning by the | | | |

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| | competent authorities. This | | Ţ. | |
| | entails that if the person | | | |
| | concerned so requests, he | | | |
| | should be granted | | | |
| | provisional legal aid as | | | |
| | soon as possible as is | | | |
| | necessary to safeguard the | | | |
| | effective exercise of the | | | |
| | right of the defence and at | | | |
| | the latest before | | | |
| | questioning. In this respect, | | | |
| | it is recognised that in | | | |
| | certain situations, for | | | |
| | example during | | | |
| | inconvenient hours, certain | | | |
| | period of time may elapse | | | |
| | before arrangements for | | | |
| | the assistance of a lawyer | | | |
| | under the legal aid system | | | |
| | can be made. | | | |
| | (10b) For certain offences, | | | |
| | Member States may | | | |
| | provide that provisional | | | |
| | legal aid will be granted | | | |
| | only if this is required by | | | |
| | the interests of justice. | | | |
| | Article 6(3)(c) of the ECHR | | | |
| | determines that legal aid | | | |
| | should be granted if the | | | |
| | interests of justice so | | | |

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| | require. Criteria that | | | |
| | should be taken into | | | |
| | account by the competent | | | |
| | authorities in determining | | | |
| | whether this is the case are | | | |
| | the complexity of the case, | | | |
| | the seriousness of the | | | |
| | alleged offence, the severity | | | |
| | of the penalty that can | | | |
| | reasonably be expected to | | | |
| | be imposed and the | | | |
| | capacity of the person | | | |
| | concerned to defend | | | |
| | himself. | | | |
| | (10c) This exception should | | | |
| | only apply to less serious | | | |
| | offences having regard to | | | |
| | the importance of the | | | |
| | public interests protected in | | | |
| | view of the severity of the | | | |
| | penalty, as provided under | | | |
| | national legislation. In any | | | |
| | event, provisional legal aid | | | |
| | should be granted when the | | | |
| | suspect or accused person | | | |
| | is brought before a | | | |
| | competent court or judge in | | | |
| | order to decide on | | | |
| | provisional detention. | | | |
| (11) Requested persons in | (11) Requested persons in | (11) Requested persons in | | |

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| European arrest warrant | European arrest warrant | European arrest warrant | | |
| proceedings who are | proceedings () should have | proceedings () should have | | |
| deprived of liberty should | the right to provisional legal | the right to provisional legal | | |
| have the right to provisional | aid upon deprivation of | aid upon deprivation of | | |
| legal aid upon deprivation | liberty in the executing | liberty in the executing | | |
| of liberty in the executing | Member State, () until the | Member State, at least until | | |
| Member State, at least until | competent authority has | the competent authority has | | |
| the competent authority has | taken the decision on | taken the decision on legal | | |
| taken the decision on legal | ordinary legal aid or the | aid and, in cases of full or | | |
| aid and, in cases of full or | person concerned is | partial rejection, that decision | | |
| partial rejection, that | released and, in cases of () | has become final, or, where | | |
| decision has become final, | rejection, that decision has | the application for legal aid is | | |
| or, where the application for | become final, or, where the | granted, the appointment of | | |
| legal aid is granted, the | application for ordinary | the lawyer by the competent | | |
| appointment of the lawyer | legal aid is granted, the | authority has taken | | |
| by the competent authority | appointment of the lawyer by | effect.(AM 17) | | |
| has taken effect. | the competent authority has | | | |
| | taken effect. | | | |
| (12) Member States should | (12) Member States should | (12) Member States should | See PRES observation on | |
| be able to provide that the | be able to provide that the | be able to provide that the | Article 4 (5) | |
| costs relating to provisional | costs relating to provisional | costs relating to provisional | | |
| legal aid for suspects or | legal aid for suspects or | legal aid for suspects or | | |
| accused persons deprived of | accused persons deprived of | accused persons () and | | |
| liberty and costs relating to | liberty and costs relating to | costs relating to provisional | | |
| provisional legal aid for | provisional legal aid for | legal aid for requested | | |
| requested persons can be | requested persons can be | persons <i>may</i> be recovered | | |
| recovered from those | recovered from those persons | from those persons if, in the | | |
| persons if, in the subsequent | if, in the subsequent | subsequent assessment and | | |
| assessment of whether they | assessment of whether they | final decision by the | | |
| have a right to legal aid, | have a right to ordinary | competent authority of | | |

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| they are found to not meet | legal aid, they are found to | whether they have a right to | | |
| the criteria to benefit from | not meet the criteria to | ordinary legal aid, they are | | |
| legal aid under national law. | benefit from ordinary legal | found to not meet the criteria | | |
| | aid under national law. | to benefit from <i>ordinary</i> legal | | |
| | | aid under national law, and if | | |
| | | they intentionally provided | | |
| | | the competent authorities | | |
| | | with false information on | | |
| | | their personal financial | | |
| | | situation. In order to ensure | | |
| | | that any recovery of costs | | |
| | | relating to provisional legal | | |
| | | aid does not prejudice the | | |
| | | suspect or accused or | | |
| | | requested person in such a | | |
| | | way as to undermine the | | |
| | | overall fairness of the | | |
| | | proceedings, Member States | | |
| | | should ensure that the | | |
| | | conditions attached to | | |
| | | recovery of costs are clear | | |
| | | and reasonable and take | | |
| | | account of the specific | | |
| | | financial situation of the | | |
| | | suspect, accused or | | |
| | (10) D | requested person. (AM 18) | | |
| | (12a) Provisional legal aid | | | |
| | should be understood as an | | | |
| | emergency mechanism of a | | | |
| | temporary nature for non- | | | |

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| | conditional access to legal | , | • | |
| | aid in case of deprivation of | | | |
| | liberty, which ensures the | | | |
| | right to a fair trial in the | | | |
| | early stages of the criminal | | | |
| | proceedings. It should be | | | |
| | made available without | | | |
| | undue delay upon request | | | |
| | of the person concerned | | | |
| | and at the latest before | | | |
| | questioning. Provisional | | | |
| | legal aid could be subject to | | | |
| | subsequent assessment | | | |
| | according to the eligibility | | | |
| | criteria for ordinary legal | | | |
| | aid where such are | | | |
| | envisaged under national | | | |
| | law and possible later | | | |
| | restitution of the costs | | | |
| | relating to provisional legal | | | |
| | aid. | | | |
| | (12b) In some Member | | | |
| | States there is no | | | |
| | distinction between | | | |
| | provisional and ordinary | | | |
| | legal aid. If there is a | | | |
| | comprehensive legal aid | | | |
| | system ensuring that the | | | |
| | persons concerned can | | | |
| | receive assistance by a | | | |

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| | lawyer without undue delay | | • | |
| | after deprivation of liberty | | | |
| | and at the latest before | | | |
| | questioning, this should be | | | |
| | considered as complying | | | |
| | with the obligations | | | |
| | imposed by this Directive | | | |
| | with respect to provisional | | | |
| | legal aid. | | | |
| | (12c) Without prejudice to | | | |
| | national law requiring the | | | |
| | mandatory presence or | | | |
| | assistance of a lawyer, | | | |
| | where a suspect or accused | | | |
| | person is deprived of | | | |
| | liberty and benefits from | | | |
| | provisional legal aid, the | | | |
| | competent authority may | | | |
| | request the person | | | |
| | concerned to make a | | | |
| | statement regarding the | | | |
| | submission of a request for | | | |
| | ordinary legal aid in order | | | |
| | to ensure that the decision | | | |
| | on ordinary legal aid is made in a timely manner. | | | |
| | Member States may | | | |
| | introduce specific | | | |
| | provisions determining the | | | |
| | consequences of making | | | |
| | consequences of making | | | |

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| | such a statement or | | | |
| | respectively the | | | |
| | consequences of not doing | | | |
| | so in a timely manner. | | | |
| | (12d) When implementing | | | |
| | this Directive account | | | |
| | should be taken of the | | | |
| | provisions of Directive | | | |
| | 2012/13/EU, which provide | | | |
| | that suspects or accused | | | |
| | persons, as well as | | | |
| | requested persons in EAW | | | |
| | proceedings, who are | | | |
| | arrested or detained within | | | |
| | the meaning of that | | | |
| | directive are provided | | | |
| | promptly with a written | | | |
| | Letter of Rights containing | | | |
| | information about any | | | |
| | entitlement to free legal | | | |
| | advice and the conditions | | | |
| | for obtaining such advice. | | | |
| | (12e) Member States | | | |
| | should make the necessary | | | |
| | arrangements to ensure | | | |
| | that suspects or accused | | | |
| | persons are in a position to | | | |
| | exercise effectively the | | | |
| | rights granted under this | | | |
| | Directive. In this respect, if | | | |

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| | after having been duly | | | |
| | informed by the competent | | | |
| | authorities about his rights | | | |
| | under this Directive, the | | | |
| | person concerned decides | | | |
| | to exercise those rights, the | | | |
| | competent authorities | | | |
| | should endeavour to | | | |
| | effectively facilitate the | | | |
| | appointment of a legal aid | | | |
| | lawyer. To this effect, | | | |
| | Member States may put in | | | |
| | place procedures or | | | |
| | mechanisms, for example | | | |
| | duty lawyer schemes or | | | |
| | emergency defence services, | | | |
| | allowing intervention with | | | |
| | short notice at police | | | |
| | stations or detention | | | |
| | centres, so as to ensure that | | | |
| | the right to provisional | | | |
| | legal aid is practicable and | | | |
| | effective. | | | |
| (13) To ensure the effective | (13) To ensure the effective | (13) To ensure the effective | | |
| access to a lawyer in the | access to a lawyer in the | access to a lawyer in the | | |
| executing Member State for | executing Member State for | executing Member State for | | |
| requested persons, Member | requested persons, Member | requested persons, Member | | |
| States should ensure that | States should ensure that | States should ensure that such | | |
| such persons have access to | such persons have access to | persons have access to legal | | |
| legal aid until the surrender, | ordinary legal aid until the | aid until the surrender, or, in | | |

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| or, in cases of non- | surrender, or, in cases of non- | cases of non-surrender, until | | |
| surrender, until the decision | surrender, until the decision | the decision on surrender has | | |
| on surrender has become | on non- surrender has become | become final. The right to | | |
| final. The right to legal aid | final. The right to ordinary | legal aid may be subject to a | | |
| may be subject to an | legal aid may be subject to an | means test and/or to a merits | | |
| assessment of the means of | assessment of the means of | test, in accordance with the | | |
| the requested person and/or | the requested person and/or | applicable eligibility criteria | | |
| whether it is in the interests | whether it is in the interests | in the executing Member | | |
| of justice to provide legal | of justice to provide | State in question. (AM 19) | | |
| aid, according to the | ordinary legal aid, according | | | |
| applicable eligibility criteria | to the applicable eligibility | | | |
| in the executing Member | criteria in the executing | | | |
| State in question. | Member State in question. | | | |
| | See Recital 9a) new of the | (13a) In some Member | Recital 9a of the GA is | |
| | Council GA | States certain minor | more complete compared to | |
| | | offences, in particular minor | the EP proposal which only | |
| | | traffic offences, minor | covers the case where | |
| | | offences in relation to | deprivation of liberty | |
| | | general municipal | cannot be imposed as a | |
| | | regulations and minor | sanction and does not | |
| | | public order offences, are | reflect the EP proposal for | |
| | | considered to be criminal | Article 2 (2) in this respect. | |
| | | offences. In such situations, | | |
| | | it would be unreasonable to | | |
| | | require that the competent | | |
| | | authorities ensure all the | | |
| | | rights under this Directive. | | |
| | | Where the law of a Member | | |
| | | State provides in respect of | | |
| | | minor offences that | | |

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| | | deprivation of liberty cannot | | |
| | | be imposed as a sanction, | | |
| | | this Directive should | | |
| | | therefore apply only to the | | |
| | | proceedings before a court | | |
| | | having jurisdiction in criminal matters. | | |
| | See Recital 9a) new of the | (13b) The scope of this | The EP text seems to be | |
| | Council GA | Directive in respect of | compatible with the general | |
| | | certain minor offences | trust of the respective | |
| | | should not affect the | provisions on minor | |
| | | obligations of Member | offences in the GA. | |
| | | States under the ECHR to | | |
| | | ensure the right to a fair | | |
| | | trial including obtaining | | |
| | | legal assistance from a | | |
| | | lawyer. | | |
| (14) To ensure that | [deleted] | (14) To ensure that requested | | |
| requested persons can | | persons can effectively | | |
| effectively exercise their | | exercise their right to appoint | | |
| right to appoint a lawyer in | | a lawyer in the issuing | | |
| the issuing Member State to | | Member State to assist the | | |
| assist the lawyer in the | | lawyer in the executing | | |
| executing Member State, in | | Member State, in accordance | | |
| accordance with Directive | | with Directive 2013/48/EU, | | |
| 2013/48/EU, the issuing | | the issuing Member State | | |
| Member State should ensure | | should ensure that requested | | |
| that requested persons have | | persons have access to | | |
| access to legal aid for the | | provisional legal aid and to | | |
| purpose of the European | | legal aid for the purpose of | | |

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| arrest warrant proceedings | | legal representation in that | | |
| in the executing Member | | Member State to assist the | | |
| State. This right may be | | <i>lawyer</i> in the executing | | |
| subject to an assessment of | | Member State in the course | | |
| the means of the requested | | of European arrest warrant | | |
| person and/or whether it is | | proceedings. The right to | | |
| in the interests of justice to | | <i>legal aid</i> may be subject to <i>a</i> | | |
| provide legal aid, according | | means <i>test</i> and/or <i>merits test</i> , | | |
| to the applicable eligibility | | in accordance with the | | |
| criteria in the issuing | | applicable eligibility criteria | | |
| Member State in question. | | in the issuing Member State | | |
| | | in question. (AM. 22) | | |
| (15) This Directive provides | (15) () Children are | (15) This Directive provides | The EP proposal refers to | |
| for the right to provisional | vulnerable and should be | for the right to provisional | vulnerable suspects, as in | |
| legal aid for children | given a specific degree of | and ordinary legal aid for | the Commission | |
| deprived of liberty and to | protection. Therefore, in | vulnerable suspects or | Recommendation of 27 | |
| legal aid for children that | respect of the right to legal | accused or requested | November 2013 on | |
| are requested in European | aid for children in criminal | persons. Children are | procedural safeguards for | |
| arrest warrant proceedings. | proceedings and for | particularly vulnerable so | vulnerable persons | |
| | children who are subject to | particular attention should | suspected or accused in | |
| | European arrest warrant | be paid to them and special | criminal proceedings. | |
| | proceedings, additional | measures should be taken in | This Directive should | |
| | procedural safeguards are | accordance with Directive | indeed have a general | |
| | set out in Directive [] on | on procedural safeguards | application, including | |
| | procedural safeguards for | for children suspected or | vulnerable persons. This | |
| | children suspected or | accused in criminal | could be possibly | |
| | accused in criminal | proceedings. (AM. 23) | underlined, as suggested by | |
| | proceedings. | | the EP. As far as any | |
| | | | additional safeguards for | |
| | | | children are concerned, they | |

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| | | | should be included in the | |
| | | | Children Directive, as | |
| | | | maintained by both the CNS | |
| | | | and the EP. | |
| (16) When implementing | (16) When implementing this | (16) When implementing this | | |
| this Directive, Member | Directive, Member States | Directive, Member States | | |
| States should ensure the | should ensure the respect of | should ensure the respect of | | |
| respect of the fundamental | the fundamental right to legal | the fundamental right of legal | | |
| right of legal aid as | aid as provided for in Article | aid as provided for in <i>the</i> | | |
| provided for in Articles | 47, the third paragraph of the | third paragraph of Article 47 | | |
| 47(3) of the Charter and | Charter and Article 6(3)(c) of | of the Charter and <i>in</i> Article | | |
| Article 6(3)(c) ECHR and | ECHR (). | 6(3)(c) of the ECHR and | | |
| ensure that legal aid is | | ensure that legal aid is | | |
| available to those who do | | available to <i>applicants on the</i> | | |
| not have sufficient | | basis of a means test and/or | | |
| resources to pay for legal | | of a merits test. In doing so, | | |
| assistance when the interest | | they should respect the | | |
| of justice so requires. | | United Nations Principles | | |
| | | and Guidelines on Access to | | |
| | | Legal Aid in Criminal | | |
| | | Justice Systems. Where the | | |
| | | granting of legal aid is | | |
| | | subject to a means test, such | | |
| | | a test should take into | | |
| | | account considerations | | |
| | | particular to vulnerable | | |
| | | suspects or accused persons. | | |
| | | (AM. 24) | | |
| | | (16a) The principle of | This recital is linked to | |
| | | effectiveness of Union law | Article 5b, as proposed by | |

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| | | requires that Member States | the EP. It would need | |
| | | put in place adequate and | certain adjustments, | |
| | | effective remedies in the | provided that the general | |
| | | event of a breach of a right | idea for introducing a | |
| | | conferred upon individuals | provision on remedies in the | |
| | | by Union law. An effective | Directive would be | |
| | | remedy should be available, | supported by the MSs. | |
| | | where the provision of legal | | |
| | | aid has been undermined, | | |
| | | delayed or refused where | | |
| | | suspects or accused persons | | |
| | | have not been adequately | | |
| | | informed of their right to | | |
| | | legal aid and where | | |
| | | provisions about eligibility | | |
| | | or cost recovery have been | | |
| | | unclear. Therefore, persons | | |
| | | applying for legal aid should | | |
| | | have the right to appeal a | | |
| | | decision refusing legal aid. | | |
| | | (AM.25) | | |
| (17) The Member States | (17) The Member States | (17) The Member States | | |
| should collect data showing | should collect relevant data, | should collect data showing | | |
| how the right to legal aid | from available data, | how the right to legal aid for | | |
| for suspects or accused | showing how the right to | suspects or accused persons | | |
| persons and requested | provisional legal aid for | and requested persons have | | |
| persons have been accessed. | suspects or accused persons | been accessed. Member | | |
| Member States should also | and requested persons has | States should also collect data | | |
| collect data on the number | been accessed. Such | on the number of cases where | | |
| of cases where provisional | relevant data should, where | legal aid was provided for | | |

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| legal aid was provided for | possible, include the number | suspects or accused persons, | | |
| suspects or accused persons | of cases where provisional | as well as for requested | | |
| deprived of liberty, as well | legal aid was provided for | persons, and the number of | | |
| as for requested persons, | suspects or accused persons | cases where this right was not | | |
| and the number of cases | deprived of liberty, as well as | exercised. Such data should | | |
| where this right was not | for requested persons, and | include the number of | | |
| exercised. Such data should | the number of cases where | requests for legal aid in | | |
| include the number of | this right was not exercised. | European arrest warrant | | |
| requests for legal aid in | Such data should also, where | proceedings when the | | |
| European arrest warrant | possible, include the number | Member State acts as issuing | | |
| proceedings when the | of requests for ordinary | and executing State, as well | | |
| Member State acts as | legal aid in European arrest | as the number of cases where | | |
| issuing and executing State, | warrant proceedings when | these requests were granted. | | |
| as well as the number of | the Member State acts as () | Data on the costs for | | |
| cases where these requests | executing State, as well as | providing () legal aid for | | |
| were granted. Data on the | the number of cases where | suspects or accused persons | | |
| costs for providing | these requests were granted. | and for requested persons | | |
| provisional legal aid for | It should also include | should also be | | |
| persons deprived of liberty | relevant data on the costs for | collected.(AM. 26) | | |
| and for requested persons | providing provisional legal | | | |
| should also be collected. | aid for persons deprived of | | | |
| | liberty and for requested | | | |
| | persons in these cases, | | | |
| | insofar as such data is | | | |
| | available. | | | |
| (18) This Directive should | (18) This Directive should | (18) This Directive should | | |
| apply to suspects or accused | apply to suspects or accused | apply to suspects or accused | | |
| persons regardless of their | persons regardless of their | persons regardless of their | | |
| legal status, citizenship or | legal status, citizenship or | legal status, citizenship or | | |
| nationality. This Directive | nationality. This Directive | nationality, sex, race, colour, | | |

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

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| | | implemented in accordance | | |
| | | with those rights and | | |
| | | principles. (AM.27) | | |
| (19) This Directive sets | (19) This Directive sets out | (19) This Directive sets | | |
| minimum rules. Member | minimum rules. Member | minimum rules. Member | | |
| States may extend the rights | States may extend the rights | States may extend the rights | | |
| set out in this Directive in | set out in this Directive in | set out in this Directive in | | |
| order to provide a higher | order to provide a higher | order to provide a higher | | |
| level of protection. Such | level of protection. Such | level of protection. Such | | |
| higher level of protection | higher level of protection | higher level of protection | | |
| should not constitute an | should not constitute an | should not constitute an | | |
| obstacle to the mutual | obstacle to the mutual | obstacle to the mutual | | |
| recognition of judicial | recognition of judicial | recognition of judicial | | |
| decisions that those | decisions that those | decisions that those minimum | | |
| minimum rules are designed | minimum rules are designed | rules are designed to | | |
| to facilitate. The level of | to facilitate. The level of | facilitate. The level of | | |
| protection should never fall | protection should never fall | protection should never fall | | |
| below the standards | below the standards provided | below the standards provided | | |
| provided by the Charter or | by the Charter or the ECHR, | by the Charter or the ECHR, | | |
| the ECHR, as interpreted in | as interpreted in the case-law | as interpreted in the case-law | | |
| the case-law of the Court of | of the Court of Justice and of | of the Court of Justice and of | | |
| Justice and of the ECtHR. | the ECtHR. | the ECtHR. <i>Under no</i> | | |
| | | circumstances should this | | |
| | | Directive be interpreted as | | |
| | | restricting the rights and | | |
| | | guarantees afforded by | | |
| | | national legal systems which | | |
| | | offer a higher level of | | |
| | | protection.(AM. 28) | | |
| (20) Since the objectives of | (20) Since the objectives of | (20) Since the objectives of | | |

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| this Directive, namely | this Directive, namely setting | this Directive, namely setting | | |
| setting common minimum | common minimum rules for | common minimum rules for | | |
| rules for the right to legal | the right to provisional legal | the right to legal aid for | | |
| aid for suspects or accused | aid for suspects or accused | suspects or accused persons | | |
| persons in criminal | persons in criminal | in criminal proceedings, | | |
| proceedings, cannot be | proceedings, and for | cannot be sufficiently | | |
| sufficiently achieved by the | provisional legal aid and | achieved by the Member | | |
| Member States and can, by | ordinary legal aid in | States and can, by reason of | | |
| reason of the scale of the | European arrest warrant | the scale of the measure, be | | |
| measure, be better achieved | proceedings, cannot be | better achieved at Union | | |
| at Union level, the Union | sufficiently achieved by the | level, the Union may adopt | | |
| may adopt measures in | Member States but can | measures in accordance with | | |
| accordance with the | rather, by reason of the scale | the principle of subsidiarity as | | |
| principle of subsidiarity as | of the measure, be better | set out in Article 5 of the | | |
| set out in Article 5 of the | achieved at Union level, the | Treaty of the European | | |
| Treaty of the European | Union may adopt measures | Union. In accordance with the | | |
| Union. In accordance with | in accordance with the | principle of proportionality, | | |
| the principle of | principle of subsidiarity as | as set out in that Article, this | | |
| proportionality, as set out in | set out in Article 5 of the | Directive does not go beyond | | |
| that Article, this Directive | Treaty of the European | what is necessary in order to | | |
| does not go beyond what is | Union. In accordance with | achieve those objectives. | | |
| necessary in order to | the principle of | | | |
| achieve those objectives. | proportionality, as set out in | | | |
| | that Article, this Directive | | | |
| | does not go beyond what is | | | |
| | necessary in order to achieve | | | |
| | those objectives. | | | |
| (21) [In accordance with | (21) () In accordance with | | | |
| Articles 3 of Protocol No 21 | Articles 1 and 2 of Protocol | | | |
| on the position of the | 21 on the position of the | | | |

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| United Kingdom and | United Kingdom and Ireland | | | |
| Ireland in respect of the | in respect of the Area of | | | |
| Area of Freedom, Security | Freedom, Security and | | | |
| and Justice, annexed to the | Justice, annexed to the Treaty | | | |
| Treaty on European Union | on the European Union and | | | |
| and to the Treaty on the | to the Treaty on the | | | |
| Functioning of the | Functioning of the European | | | |
| European Union, those | Union, and without prejudice | | | |
| Member States have | to Article 4 of that Protocol, | | | |
| notified their wish to | those Member States are not | | | |
| participate in the adoption | taking part in the adoption of | | | |
| and application of this | this Directive and are not | | | |
| Directive] OR [In | bound by it or subject to its | | | |
| accordance with Articles 1 | application. ¹⁴ | | | |
| and 2 of Protocol 21 on the | | | | |
| position of the United | | | | |
| Kingdom and Ireland in | | | | |
| respect of the Area of | | | | |
| Freedom, Security and | | | | |
| Justice, annexed to the | | | | |
| Treaty on the European | | | | |
| Union and to the Treaty on | | | | |
| the Functioning of the | | | | |
| European Union, and | | | | |
| without prejudice to Article | | | | |
| 4 of that Protocol, those | | | | |
| Member States are not | | | | |
| taking part in the adoption | | | | |

¹⁴ The wording of this recital is adapted to the position of the United Kingdom and Ireland taken in accordance with the provisions of protocol No 21.

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| of this Directive and are not | | | Ţ. | |
| bound by it or subject to its application] ¹³ . | | | | |
| (22) In accordance with | identical | identical | | |
| Articles 1 and 2 of Protocol | | | | |
| No 22 on the position of | | | | |
| Denmark, annexed to the | | | | |
| Treaty on the European | | | | |
| Union and to the Treaty on | | | | |
| the Functioning of the | | | | |
| European Union, Denmark | | | | |
| is not taking part in the | | | | |
| adoption of this Directive, | | | | |
| and is not bound by it or | | | | |
| subject to its application. | | | | |

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¹³ The final wording of this recital in the Directive will depend on the position of the United Kingdom and Ireland taken in accordance with the provisions of protocol No 21.

| Articles | | | | | | |
|---|--|--|--|---------------------|--|--|
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| | Article 1 | | | | | |
| Subject-matter | Subject-matter | Subject-matter | | | | |
| 1. This Directive lays down minimum rules concerning: (a) the right to provisional legal aid for suspects or accused persons in criminal proceedings who are deprived of liberty, and (b) the right to provisional legal aid and to legal aid for requested persons who are subject to European arrest warrant proceedings. | 1. This Directive lays down minimum rules concerning: (a) the right to provisional legal aid for suspects or accused persons in criminal proceedings who are deprived of liberty, and (b) the right to provisional legal aid and to ordinary legal aid for requested persons who are subject to proceedings pursuant to Framework Decision 2002/584/JHA ("European arrest warrant proceedings"). | 1. This Directive lays down minimum rules concerning: (a) the right to provisional and ordinary legal aid for suspects or accused persons in criminal proceedings () and (AM. 29) (b) the right to provisional and ordinary legal aid for requested persons who are subject to European arrest warrant proceedings. (AM. 29) | According to the EP, the scope of the Directive should include the right to both provisional and ordinary legal aid in criminal proceedings under all circumstances. Thus the scope should be identical with the scope of the A2L Directive and not only limited to deprivation of liberty situations MS are invited to express their views on the extension of the scope and to indicate whether there is room for a possible compromise, e.g. accepting the inclusions of ordinary legal aid but limited only to deprivation of liberty situations. | | | |
| 2. This Directive | 2. This Directive aims to | 2. This Directive | | | | |
| complements Directive 2013/48/EU. Nothing in this | complement Directive 2013/48/EU by | complements Directive 2013/48/EU <i>on the right of</i> | | | | |

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| Directive shall be | rendering effective, in the | access to a lawyer. Nothing | | |
| interpreted as limiting the | cases referred to in Article | in this Directive shall be | | |
| rights provided for in that | 2(1), the right of access to a | interpreted as limiting the | | |
| Directive. | lawyer, as provided under | rights provided for in that | | |
| | Directive 2013/48/EU. | Directive.(AM. 31) | | |
| | 3. Nothing in this Directive | | | |
| | shall be interpreted as | | | |
| | limiting the rights provided | | | |
| | for in () Directive | | | |
| | 2013/48/EU. | | | |
| | | Article 2 | | |
| Scope | Scope | Scope | | |
| This Directive shall apply | 1. This Directive shall apply | 1. This Directive shall apply | The issue of the extension | |
| to: | to: | to: | of the scope is addressed | |
| a) suspects or accused | (a) suspects or accused | (a) suspects or accused | above. | |
| persons in criminal | persons in criminal | persons in criminal | EP specifies further the | |
| proceedings, who are | proceedings, who are | proceedings () who have a | scope of the Directive by | |
| deprived of liberty and who | deprived of liberty and who | right of access to a lawyer | adding a reference to any | |
| have a right of access to a | have a right of access to a | pursuant to Directive | other instrument which | |
| lawyer pursuant to | lawyer pursuant to Directive | 2013/48/EU or any legally | might give rise to the right | |
| Directive 2013/48/EU; | 2013/48/EU; | binding Union instrument | to A2L, e.g. concerning | |
| | | on procedural safeguards | child suspects. | |
| | | for child suspects; (AM. 31) | | |
| b) requested persons. | (b) requested persons who | (b) requested persons <i>as</i> | MSs are invited to express | |
| | are subject to European | defined in point (c) of Article | their views on this issue. | |
| | arrest warrant proceedings, | 3 of this Directive.(AM. 31) | | |
| | upon arrest in the executing | | | |
| | Member State, and who | | | |
| | have a right of access to a | | | |

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| (doc. 17635/13) | (doc. 6603/15) | (A8-0165/2015) | Presidency | proposal |
| | lawyer pursuant to | | | |
| | Directive 2013/48/EU. | | | |
| | 2. This Directive shall not | | | |
| | apply when suspects or | | | |
| | accused persons, or | | | |
| | requested persons, have | | | |
| | waived their right of access | | | |
| | to a lawyer, in accordance | | | |
| | with Article 9 or | | | |
| | Article 10(3) respectively, | | | |
| | of Directive 2013/48/EU or | | | |
| | when Member States have | | | |
| | applied the temporary | | | |
| | derogations in accordance | | | |
| | with Article 3 (5) or (6), | | | |
| | thereof. | | | |
| | 3. In respect of minor | 2. Without prejudice to the | EP amendment reflects the | |
| | offences, and provided this | right to a fair trial, in respect | provision of Article 2 (4)of | |
| | is in conformity with the | of minor offences: | the A2L Directive in its | |
| | right to a fair trial, this | | entirety, thus extending the | |
| | Directive shall not apply: | | application of the Directive | |
| | (a) where the law of a | (a) where the law of a | also to minor offences when | |
| | Member State provides for | Member State provides for | the person is deprived of | |
| | the imposition of a sanction | the imposition of a sanction | liberty. | |
| | by an authority other than | by an authority other than a | MS are invited to comment | |
| | a court having jurisdiction | court having jurisdiction in | on EP text. | |
| | in criminal matters, and the | criminal matters, and the | MSs are also invited to | |
| | imposition of such a | imposition of such a | indicate whether the | |
| | sanction may be appealed | sanction may be appealed or | application of the Directive | |
| | or referred to such a court; | referred to such a court; or | could be extended at least to | |

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| | or (b) where deprivation of liberty cannot be imposed as a sanction. | (b) where deprivation of liberty cannot be imposed as a sanction; this Directive shall only apply to the proceedings before a court having jurisdiction in criminal matters. In any event, this Directive shall fully apply where the suspect or accused person is deprived of liberty, irrespective of the stage of the criminal proceedings. (AM. 31) | the court stages of the proceedings in respect of minor offences. | |
| | 4. Provided this is in conformity with the right to a fair trial, this Directive shall not apply in situations where the liberty of the person concerned has been restricted for any of the following purposes: a) during a preliminary questioning by the police or by another law enforcement authority in order to identify the person concerned, or to determine whether an investigation | | | |

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| | should be started; b) in order to verify the possession of weapons or other similar safety issues; c) in order to carry out any investigative or evidence-gathering act, other than those referred to in Article 3(3)(c) of Directive 2013/48/EU; d) in order to bring the suspect or accused person to appear before a competent authority in accordance with rules provided by national law | | | |
| | V | Article 3 | | |
| Definitions | Definitions | Definitions | | |
| For the purposes of this Directive, the following definitions shall apply: a) legal aid means funding and assistance from the Member State ensuring the exercise of the right of access to a lawyer, | For the purposes of this Directive, the following definitions shall apply: (a)"legal aid" means funding () by a Member State of the assistance by a lawyer enabling the exercise of the right of access to a lawyer. | For the purposes of this Directive, the following definitions shall apply: (a) "ordinary legal aid" means funding and assistance from the Member State ensuring the exercise of the right of access to a lawyer; (AM. 32) | EP suggests a definition for ordinary legal aid. The GA does not provide for such a definition. The notion of "ordinary" was introduced vs. the notion of "provisional" legal aid to define better the temporal scope of the obligation to provide provisional legal aid. Namely, until the final | |

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| | | | decision on ordinary legal | |
| | | | aid is taken. However, as | |
| | | | far as the "content" aspect | |
| | | | of the right to legal aid is | |
| | | | concerned, the GA uses the | |
| | | | term "legal aid". | |
| | | | It is noted that throughout | |
| | | | the Directive EP sometimes | |
| | | | makes a distinction between | |
| | | | "provisional" and | |
| | | | "ordinary" legal aid, while | |
| | | | in other provisions it only | |
| | | | refers to "legal aid". | |
| | | | The PRES will seek to | |
| | | | establish a common | |
| | | | understanding with the EP | |
| | | | on the use of the terms in | |
| | | | the Directive. | |
| | | | In addition EP kept | |
| | | | "assistance" in the | |
| | | | definition. The GA reflects | |
| | | | more precisely the role of | |
| | | | the state in providing legal | |
| | | | aid. It is also recalled that | |
| | | | the issue of practical | |
| | | | arrangements that the state | |
| | | | needs to put into place as to | |
| | | | render the exercise of the | |
| | | | right to legal aid effective is | |
| | | | addressed in Article 4 (4a) | |

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| | | and recital 12e. | |
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| • • • | | * * | |
| 1 0 | . , , 1 | | |
| • | • | It is therefore preferable. | |
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| , | (A1M. 33) | | |
| | | | |
| <u> </u> | | | |
| - | | | |
| | | | |
| to national law. | | | |
| (c)"requested person" means | c) "requested person" means | Linked to the decision on | |
| a person subject to European | a person subject to a | scope. | |
| • | European arrest warrant, | | |
| | | | |
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| | (1) 117 | | |
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| | (b) "provisional legal aid" means temporary legal aid, which is not subject to the eligibility criteria for legal aid applicable under national law, and which is granted to a person deprived of liberty until the competent authority takes the final decision on ordinary legal aid according to national law. (c) "requested person" means | (b) "provisional legal aid" means temporary legal aid, which is not subject to the eligibility criteria for legal aid applicable under national law, and which is granted to a person deprived of liberty until the competent authority takes the final decision on ordinary legal aid according to national law. (c) "requested person" means a person subject to European arrest warrant proceedings who has been arrested in the executing Member State. [deleted] See recital 7a (7a) Legal aid should be understood as a state ensured assistance provided by any person who, in accordance with national law, is qualified and (b) "provisional legal aid" means legal aid () provided until the decision on ordinary legal aid has been taken and has come into effect; (AM. 33) (c) "requested person" means a person subject to a European arrest warrant, (d) "legal aid lawyer" means any person, who, in accordance with national law, is qualified and entitled, including by means of accreditation by an authorised body, to provide legal advice, assistance and | (b) "provisional legal aid" means temporary legal aid, which is not subject to the eligibility criteria for legal aid applicable under national law, and which is granted to a person deprived of liberty until the competent authority takes the final decision on ordinary legal aid according to national law. (c) "requested person" means a person subject to European arrest warrant proceedings who has been arrested in the executing Member State. [deleted] See recital 7a (7a) Legal aid should be understood as a state ensured assistance provided by any person who, in accordance with national law, is qualified and entitled, including by means of accordance with national law, is qualified and advice, assistance and legal aid." (b) "provisional legal aid" mad recital 12e. MS are invited to express their view on this definition. GA approach is more specific and goes further. It is therefore preferable. Linked to the decision on scope. Linked to the decision on scope. It does not seem appropriate to introduce a legal definition for a new category of lawyers. It is an independent profession with its own regulatory bodies. It is recalled that to avoid confusion and repetition |

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| persons. | described in Directive | accused persons. | definition of a "lawyer" in | |
| | 2013/48/EU. | (AM. 34) | recital 15 of the A2L | |
| | | | Directive, recital 7a of the | |
| | | | GA only refers to that | |
| | | | Directive, where it belongs. | |
| | | | Recital 7a is consistent with | |
| | | | the definition of "legal aid" | |
| | | | from a content point of | |
| | | | view found in Article 3 (a) | |
| | | | of the GA. | |
| | | | It is also noted that | |
| | | | "representation" is covered | |
| | | | by the term "assistance", as | |
| | | | referred to in recital 15 of | |
| | | | the A2L Directive. | |
| | | Article 4 | | |
| Access to provisional legal | () Provisional legal aid in | Access to provisional legal | It is noted that in the GA | |
| aid | criminal proceedings | aid | the criminal proceedings | |
| | | | and the EAW proceedings | |
| | | | are dealt with separately, | |
| | | | respectively in Article 4 and | |
| | | | 5. | |
| 1. Member States shall | 1. Member States shall | 1. Member States shall | PRES suggests to use | |
| ensure that the following | ensure that suspects or | ensure that the following | "request", as in the GA | |
| persons, if they so wish, | accused persons in criminal | persons, if they so wish, have | instead of "wish" as it | |
| have the right to provisional | proceedings, who are | the right to provisional legal | implies more formal | |
| legal aid: | deprived of liberty and who | aid: | manifestation and gives | |
| (a) suspects or accused | have a right of access to a | (a) suspects or accused | legal certainty (see para 2 of | |
| persons in criminal | lawyer pursuant to | persons in criminal | the GA). | |

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| proceedings, who are deprived of liberty; (b) requested persons deprived of liberty in the executing Member State. | Directive 2013/48/EU, () have the right to provisional legal aid. | proceedings, who have the right of access to a lawyer pursuant to Directive 2013/48/EU or any legally binding Union instrument on procedural safeguards for child suspects; (AM 35) (b) requested persons, who have the right of access to a lawyer pursuant to Directive 2013/48/EU both in the executing and in the issuing Member State, in accordance with Article 10 of that Directive or any legally binding Union instrument on procedural safeguards for child suspects. (AM 35) | The issue of scope of the Directive in relation to EAW proceedings is addressed in Article 5 | |
| 2. Provisional legal aid shall be granted without undue delay after deprivation of liberty and in any event before questioning. | 2. When the suspect or accused person is deprived of liberty, provisional legal aid shall be granted, if the person concerned so requests, without undue delay and at the latest before questioning by the police, by another law enforcement authority or by a judicial | 2. Provisional legal aid shall be granted without undue delay () and in any event before questioning. (AM. 36) | Besides the issue of scope, it is noted that the GA provides for a detailed presentation of the material conditions that should be in place for the exercise of the right to provisional legal aid. | |

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| | authority. Provisional legal | | | |
| | aid is granted for the | | | |
| | purposes of the criminal | | | |
| | proceedings in which the | | | |
| | person concerned is | | | |
| | suspected or accused of | | | |
| | having committed a | | | |
| | criminal offence. | | | |
| | 2a. In respect of less serious | | | |
| | offences, and provided this | | | |
| | is in conformity with the | | | |
| | right to a fair trial, | | | |
| | Member States may | | | |
| | provide in their legislation | | | |
| | that provisional legal aid is | | | |
| | granted when this is | | | |
| | required in the interests of | | | |
| | justice. The competent | | | |
| | authorities shall decide | | | |
| | whether granting | | | |
| | provisional legal aid is in | | | |
| | the interests of justice | | | |
| | without undue delay and at | | | |
| | the latest before | | | |
| | questioning of the person | | | |
| | concerned. | | | |
| | 2b. In any event, | | | |
| | provisional legal aid shall | | | |
| | be granted when the | | | |
| | suspect or accused person | | | |

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| | is brought before a | | | |
| | competent court or judge in | | | |
| | order to decide on | | | |
| | provisional detention. | | | |
| 3. Provisional legal aid shall | 3. Provisional legal aid shall | 3. Provisional legal aid shall | The text of GA is preferable | |
| be ensured until the final | be provided until the person | be ensured until the final | as it is clearer. It has to be | |
| decision on legal aid has | concerned is released or a | decision on legal aid has been | avoided that the suspect | |
| been taken and comes into | final decision on ordinary | taken and <i>has come</i> into | would abuse his right, for | |
| effect, or, where the | legal aid has been taken by | effect, and until either of the | example by delaying the | |
| suspects or accused persons | the competent authority | following: | time to get another lawyer. | |
| are granted legal aid, the | and: | (a) where legal aid has been | Furthermore finding a | |
| appointment of the lawyer | a) where the suspects or | granted, the appointment of | lawyer of his or her choice, | |
| has taken effect. | accused persons are granted | the lawyer has taken effect; | as suggested by the EP, | |
| | ordinary legal aid, the | or | does not seem to concern | |
| | appointment of the lawyer | (b) where legal aid has been | the exercise of the right to | |
| | has taken effect; or | refused, the decision has | legal aid, in cases where the | |
| | b) in cases of rejection, | become final and the suspect | application has been | |
| | this decision has become | or accused person or the | refused. It concerns rather | |
| | final. | requested person has had a | the right of an access to a | |
| | | reasonable opportunity to | lawyer. | |
| | | find a lawyer of his or her | | |
| | | choice.(AM. 37) | | |
| 4. Member States shall | 4. Member States shall | 4. Member States shall | | |
| ensure that provisional legal | ensure that provisional legal | ensure that provisional legal | | |
| aid is provided to the extent | aid is provided to the extent | aid is provided to the extent | | |
| necessary to effectively | necessary to allow suspects | necessary to effectively | | |
| exercise the right of access | or accused persons to | exercise the right of access to | | |
| to a lawyer in Directive | effectively exercise their | a lawyer in Directive | | |
| 2013/48/EU on the right of | right of access to a lawyer | 2013/48/EU on the right of | | |
| access to a lawyer, in | under Directive 2013/48/EU | access to a lawyer, in | | |

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| (doc. 17635/13) | (doc. 6603/15) | (A8-0165/2015) | Presidency | proposal |
| particular having regard to | (), in particular having | particular having regard to | | |
| Article 3 (3). | regard to Article 3(3) | Article 3 (3). | | |
| | thereof. | | | |
| | 4a. Member States shall | | | |
| | make the necessary | | | |
| | arrangements to ensure | | | |
| | that the suspects or accused | | | |
| | persons who are deprived | | | |
| | of liberty are in a position | | | |
| | to exercise effectively their | | | |
| | right to provisional legal | | | |
| | aid. | | | |
| | | 4a. Member states shall | The Directive on | |
| | | ensure that provisional legal | interpretation and | |
| | | aid also includes, where | translation (measure A) | |
| | | necessary, interpretation for | provides for the necessary | |
| | | communication between the | guarantees that the person | |
| | | person deprived of liberty | concerned is entitled to | |
| | | and the lawyer in | these rights in the course of | |
| | | accordance with Directive | the criminal proceedings, no | |
| | | 2010/64/EU, in particular | matter whether the lawyer is | |
| | | having regard to Article 2(2) | provided through a legal aid | |
| | | thereof. (AM. 38) | scheme or not. In this | |
| | | | respect, the EP suggestion | |
| | | | is redundant. | |
| 5. Member States shall be | 5. Member States may | 5. Member States <i>may</i> | The philosophy of the COM | |
| able to provide that the | provide that the costs relating | provide that, exceptionally, | proposal followed in the | |
| costs relating to provisional | to provisional legal aid can | the costs relating to | GA approach is that | |
| legal aid can be recovered | be recovered from suspects | provisional legal aid can be | provisional legal aid is | |
| from suspects or accused | or accused persons () who | recovered from suspects or | granted without the need to | |

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| persons and requested | do not meet the eligibility | accused persons and | assess any means or merits | |
| persons who do not meet | criteria for ordinary legal aid | requested persons <i>if it is</i> | test criteria. The only | |
| the eligibility criteria for | as applicable under national | established through a final | condition is that the person | |
| legal aid as applicable | law. | decision that those persons | is deprived of liberty, which | |
| under national law. | | do not meet the eligibility | is sufficient to fulfil the | |
| | | criteria for <i>ordinary</i> legal aid | interest of justice | |
| | | as applicable under national | requirement. | |
| | | law, and if they have | Furthermore, it seems that | |
| | | intentionally provided the | the EP proposal limits the | |
| | | competent authorities with | possibility to put in place a | |
| | | false information on their | cost recovery system only | |
| | | personal financial situation. | to the MSs which apply a | |
| | | In order to ensure that any | means test. For those which | |
| | | recovery of costs relating to | apply only a merits test it | |
| | | provisional legal aid does | will not be possible. | |
| | | not prejudice the suspect or | It should be noted that | |
| | | accused person or the | according to the ECHR case | |
| | | requested person in such a | law, a person does not need | |
| | | way so as to undermine the | to prove beyond reasonable | |
| | | overall fairness of the | doubt its lack of financial | |
| | | proceedings, Member States | means. So requiring the MS | |
| | | shall ensure that the | to prove that the limited | |
| | | conditions attached to | information they received | |
| | | recovery of costs are clear | on the financial situation of | |
| | | and reasonable and take | the person is false and that | |
| | | account of the specific | this was made intentionally | |
| | | financial situation of the | is too much of a burden. | |
| | | suspect or accused person or | Recovering costs is already | |
| | | the requested person.(AM. | difficult but it seems that | |
| | | 39) | with this provision it | |

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| | | | becomes simply impossible. | |
| | | | The PRES is of the opinion | |
| | | | that the optional nature of | |
| | | | this provision should be | |
| | | | kept and it should be for the | |
| | | | MSs to organise the cost | |
| | | | recovery system at national | |
| | | | level. | |
| | | | On the other hand, it could | |
| | | | be appropriate to introduce | |
| | | | certain requirements if a | |
| | | | MS choses to apply such a | |
| | | | system, such as that the | |
| | | | conditions for recovery are | |
| | | | clear and reasonable, as | |
| | | | proposed in the last part of | |
| | | | the EP proposal. | |
| | | | MSs are invited to express | |
| | | | their views. | |
| | | Article 4a(new) (AM. 40) | | |
| | | 1. Member States shall | The EP favours the | |
| | | ensure that the persons | inclusion of a general | |
| | | referred to in Article 4(1) | description of the means | |
| | | may obtain access to legal | and merits test, as included | |
| | | aid if they lack sufficient | in the COM | |
| | | financial means to meet part | Recommendation, or at | |
| | | or all of the costs of their | least elements thereof in the | |
| | | defence and the proceedings | Directive. Hence the | |
| | | ('means test') and/or where | proposal for Article 4a. | |

| Commission proposal (| Council GA | Orientation vote LIBE | Observations | Compromise |
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| | | it is in the interests of justice | Putting aside the issue of | |
| | | to provide legal aid ('merits | the scope of the Directive, | |
| | | test'). | the EP proposal, in | |
| | | | particular para 2 and 3, does | |
| | | | not provide for sufficient | |
| | | | flexibility for the MSs to | |
| | | | apply their national legal | |
| | | | aid systems. | |
| | | | On the other hand, | |
| | | | introducing a requirement | |
| | | | that all relevant information | |
| | | | on legal aid in criminal | |
| | | | proceedings should be | |
| | | | easily accessible and | |
| | | | understandable to suspects | |
| | | | or accused persons, as | |
| | | | proposed in para 4 might be | |
| | | | possibly considered. | |
| | | | MG | |
| | | | MS are invited to express | |
| | | 2 71 | their view on new article 4a. | |
| | | 2. The means test shall be based on all relevant and | | |
| | | | | |
| | | objective factors, such as | | |
| | | income, capital, family situation, standard of living | | |
| | | and the cost of a legal aid | | |
| | | lawyer. | | |
| | | 3. The merits test shall | | |
| | | include an assessment of the | | |

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| | | urgency and complexity of | | |
| | | the case, the seriousness of | | |
| | | the offence and the severity | | |
| | | of the potential penalty that | | |
| | | may be imposed, as well as | | |
| | | the social and personal | | |
| | | circumstances of the suspect | | |
| | | or accused person or the | | |
| | | requested person concerned. | | |
| | | 4. Member States shall make | | |
| | | all relevant information on | | |
| | | legal aid in criminal | | |
| | | proceedings easily accessible | | |
| | | and understandable to | | |
| | | suspects or accused persons | | |
| | | and requested persons, | | |
| | | including information on | | |
| | | how and where to apply for | | |
| | | such aid, transparent criteria | | |
| | | on eligibility for legal aid, as | | |
| | | well as information on the | | |
| | | possibilities available in | | |
| | | circumstances where access | | |
| | | to legal aid is refused or a | | |
| | | legal aid lawyer provides | | |
| | | insufficient legal assistance. | | |
| Article 4b (new) | | | | |
| | | Decisions on whether or not | In general PRES is of the | |
| | | to grant legal aid, and the | opinion that this article is | |

| Commission proposal | Council GA | Orientation vote LIBE | Observations | Compromise |
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| (doc. 17635/13) | (doc. 6603/15) | (A8-0165/2015) | Presidency | proposal |
| | | assignment of lawyers, shall be made promptly by an independent competent authority. Member States shall ensure that the responsible authorities make decisions diligently and that there are substantial guarantees against arbitrariness. (AM. 41) | too vague. Clarification from the EP on the intended scope and implications of this provision will be requested. For reasons of consistency it is proposed to replace "promptly" by "without undue delay". | |
| | | Article 5 | | |
| Legal aid for requested | Provisional legal aid and | Legal aid for requested | | |
| persons | ordinary legal aid in | persons | | |
| | European arrest warrant | | | |
| | proceedings | | | |
| | 0a. The executing Member | | | |
| | State shall ensure that, as | | | |
| | long as a final decision on | | | |
| | ordinary_legal aid has not | | | |
| | been taken in accordance | | | |
| | with paragraph 1, | | | |
| | requested persons have the right to provisional legal | | | |
| | aid in accordance with | | | |
| | Article 4(2), 4(3), 4(4a) and | | | |
| | 4(5) of this Directive, which | | | |
| | shall apply <i>mutatis</i> | | | |
| | mutandis to European | | | |

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|--------------------------------|------------------------------------|------------------------------|--------------------------------|------------|
| (doc. 17635/13) | (doc. 6603/15) | (A8-0165/2015) | Presidency | proposal |
| | arrest warrant proceedings | | | |
| | in the executing Member | | | |
| | State upon arrest pursuant | | | |
| | to a European arrest | | | |
| | warrant. | | | |
| | 0b. Member States shall | | | |
| | ensure that provisional | | | |
| | legal aid is provided to the | | | |
| | extent necessary to allow | | | |
| | requested persons to | | | |
| | effectively exercise their | | | |
| | right of access to a lawyer | | | |
| | under Directive | | | |
| | 2013/48/EU, in particular | | | |
| | having regard to Article | | | |
| | 10(2) thereof. | | | |
| 1. The executing Member | 1. The executing Member | 1. The executing Member | The EP suggests to extend | |
| State shall ensure that | State shall ensure that | State shall ensure that | the temporal scope of the | |
| requested persons have the | requested persons have the | requested persons have the | obligation for the executing | |
| right to legal aid upon arrest | right to ordinary legal aid | right to provisional and | MS to provide legal aid to | |
| pursuant to a European | upon arrest pursuant to a | ordinary legal aid, once a | an earlier point in time - the | |
| arrest warrant until they are | European arrest warrant until | European arrest warrant has | issuing of the EAW. This | |
| surrendered, or, in cases of | they are surrendered, or, in | been issued until they are | does not seem | |
| non-surrender, until the | cases of non-surrender, until | surrendered, or, in cases of | proportionate. | |
| decision on surrender has | the decision on non- | non-surrender, until the | MG | |
| become final. | surrender has become final. | decision on surrender has | MSs are invited to | |
| | | become final. (AM. 42) | comment. | |
| 2. The issuing Member | [deleted] | 2. The issuing Member State | It is noted that neither the | |
| State shall ensure that | _ | shall ensure that requested | Directive on A2L nor the | |

| (doc. 17635/13) (do | | Orientation vote LIBE | Observations | Compromise |
|--|--------------|--|--|------------|
| (400.17.000.120) | oc. 6603/15) | (A8-0165/2015) | Presidency | proposal |
| requested persons, that exercise their right to appoint a lawyer in the issuing Member State to assist the lawyer in the executing Member State, according to Article 10 of Directive 2013/48/EU, have the right to legal aid in that Member State for the purpose of the European arrest warrant proceedings in the executing Member State. | oc. 6603/15) | persons, that exercise their right to appoint a lawyer in the issuing Member State and in any other Member State where evidence-gathering or other investigative acts are being carried out by the competent authorities, according to Article 10 of Directive 2013/48/EU have the right to provisional and ordinary legal aid in that Member State for the purpose of the European arrest warrant proceedings in the executing Member State .(AM. 42) | Presidency EAW FD contain a provision that would imply that the person concerned is entitled to certain procedural rights for the purposes of execution of the EAW in "any other MS where evidence-gathering or other investigative acts are being carried out". In addition, this proposal is not consistent with the EP proposal on provisional legal aid for requested persons under Article 4(1)(b), which only refers to Article 10 of the A2L Directive. Introducing such a requirement is not proportionate and might actually impede the effectiveness of the EAW proceedings. In general, MSs are invited to express their views how in principle the position of the EP on the right to legal aid in the issuing MS could be possibly addressed. | proposal |

| Commission proposal | Council GA | Orientation vote LIBE | Observations | Compromise |
|---|--|--|--|------------|
| (doc. 17635/13) | (doc. 6603/15) | (A8-0165/2015) | Presidency | proposal |
| 3. The right to legal aid referred to in paragraphs 1 and 2 may be subject to an assessment of the means of the requested person and/or whether it is in the interests of justice to provide legal aid, according to the applicable eligibility criteria in the Member State in question. | 3. The right to ordinary legal aid referred to in paragraph 1 () may be subject to an assessment of the means of the requested person and/or whether it is in the interests of justice to provide ordinary legal aid, according to the applicable eligibility criteria in the executing Member State. | 3. The assessment of the application for ordinary legal aid submitted by the requested person shall be based on the eligibility criteria as laid down in Article 4a, namely an assessment of the financial means of the requested person in Member States in which legal aid is subject to a means test and/or of whether it is in the interests of justice to provide legal aid in the case in question in Member States in which legal aid is subject to a merits test(AM. 42) | GA is clearer and should be kept. | ргорозаг |
| | | Article 5a (new) AM. 43 | | |
| | | 1. In order to ensure the effectiveness and quality of legal aid, Member States shall take the necessary action to guarantee that the legal aid services provided are of a sufficiently high standard to ensure that the right to a fair trial is safeguarded. | A similar provision is found in Article 2(8) and Article 3(9) of Measure A. PRES would like to point out that lawyers are an independent profession and have self-regulatory bodies. In terms of implementation, it could be extremely difficult to provide for such | |

| Commission proposal | Council GA | Orientation vote LIBE | Observations | Compromise |
|----------------------------|----------------|---|---|------------|
| (doc. 17635/13) | (doc. 6603/15) | (A8-0165/2015) | Presidency | proposal |
| | | | guarantees and then to measure the compliance with the requirements of the Directive. | |
| | | | MSs are invited to express their views. They are also invited to reflect on any possible alternative approaches to address the concern expressed by the EP allowing the acknowledgment of this issue at political level. | |
| | | 2. Member States shall, in particular, ensure that: (a) ordinary legal aid is provided at all stages of the criminal justice process; | The person concerned is entitled to the rights under this Directive. The provisional legal aid is intended to fill in the gap that might exist while the application for legal aid is processed. In such cases according the COM proposal and the GA the person will already have access to assistance by a lawyer and therefore the EP concern would be covered. | |

| Commission proposal | Council GA | Orientation vote LIBE | Observations | Compromise |
|----------------------------|----------------|-------------------------------|-------------------------------|------------|
| (doc. 17635/13) | (doc. 6603/15) | (A8-0165/2015) | Presidency | proposal |
| | | (b) systems ensuring the | Lawyers are an independent | |
| | | quality and independence of | and self-regulatory | |
| | | legal aid lawyers are put in | profession. There is a | |
| | | place or maintained, in | balance to be stricken | |
| | | particular a system of | between self-regulation and | |
| | | accreditation for legal aid | statutory obligations, in | |
| | | lawyers as well as education | particular such stemming | |
| | | and continuous professional | from EU legislation. | |
| | | training in order to ensure | Undoubtedly, the ultimate | |
| | | that these lawyers possess | objective of any quality | |
| | | sufficient knowledge, skills | system should be to | |
| | | and experience to contribute | guarantee the effective | |
| | | to the effective exercise of | exercise of the rights of the | |
| | | the rights of the defence; | defence. How this could be | |
| | | | achieved however should be | |
| | | | rather a matter to be | |
| | | | considered in a national | |
| | | | context. | |
| | | (c) continuity in legal | Too vague. | |
| | | representation if the suspect | | |
| | | or accused person and | | |
| | | requested person so wish, is | | |
| | | ensured; | | |
| | | (d) suspect or accused | | |
| | | person and requested person | | |
| | | have the right to have the | | |
| | | legal aid lawyer assigned to | | |
| | | them replaced once; | | |
| | | (e) adequate funding and | Very sensitive issue. How | |
| | | resources are provided and | adequateness will be | |

| Commission proposal | Council GA | Orientation vote LIBE | Observations | Compromise |
|----------------------------|----------------|--|---|------------|
| (doc. 17635/13) | (doc. 6603/15) | (A8-0165/2015) | Presidency | proposal |
| | | budgetary autonomy is guaranteed for efficient functioning of the legal aid system; | measured? | |
| | | (f) appropriate training is provided to all staff involved in the decision-making on legal aid in criminal proceedings; | What are the national experiences in this respect? | |
| | | (g) any decision rejecting in part or in full an application for legal aid is given to the suspect or accused person and the requested person in writing. | This paragraph is more pertinent to the provisions on the exercise of the rights granted under this directive, for example Article 4. Could it be possibly acceptable in such a context? | |
| | | Article 5b (new) (AM. 44) | | |
| | | 1. Any person who applies for legal aid under this Directive shall have the right to appeal a decision refusing legal aid before an independent court, with a view to preserving the right to a fair trial and the right to defence. | PRES is going to seek clarification from the EP on the link between the 2 paragraphs. It seems that para 2 already provides for the right to a judicial review in case of refusal of legal aid. | |

| Commission proposal (doc. 17635/13) | Council GA (doc. 6603/15) | Orientation vote LIBE (A8-0165/2015) | Observations Presidency | Compromise proposal |
|-------------------------------------|-----------------------------|--------------------------------------|------------------------------------|---------------------|
| | | 2. Member States shall | This proposal of the EP is to | |
| | | ensure that suspects, | certain extent similar with | |
| | | accused persons and | Article 12 (1) in the | |
| | | requested persons have an | Directive on A2L. | |
| | | effective remedy if their | For reasons of consistency | |
| | | rights under this Directive | and subject to redrafting | |
| | | have been breached. Those | (for example the remedies | |
| | | remedies shall include the | concerning the right to be | |
| | | right to judicial review if | informed are already | |
| | | access to legal aid has been | covered under Measure B), | |
| | | undermined, delayed or | would MSs be willing to | |
| | | refused in full or in part, or | consider introducing such a | |
| | | if those persons have not | provision in this Directive? | |
| | | been adequately informed of | Could the right to appeal | |
| | | their right to provisional and | refereed to in para 1 be | |
| | | ordinary legal aid. | exercised before an | |
| | | | independent body as well? | |
| | | Article 6 | | |
| Provision of data | Provision of data | Provision of data | | |
| 1. Member States shall | Member States shall by [2 | 1. Member States shall | This article concerns the | |
| collect data with regard to | years after the date | collect relevant statistical | obligation of the MSs to | |
| how the rights in Article 4 | mentioned in Article 8 (1)] | data with regard to how the | provide data. Hence the GA | |
| and Article 5 have been | and every three years | rights in Articles 4, 4a, 4b, 5 | text. | |
| implemented. | thereafter, send to the | and 5a have been | Would MSs be willing to | |
| | Commission available data | implemented, whilst fully | consider reintroducing para | |
| | showing how the rights in | ensuring personal data | 1 of the COM proposal | |
| | Articles 4 and 5 have been | protection for suspects or | concerning the collection of | |
| | implemented. | accused and requested | <i>relevant</i> data, as suggested | |
| | | persons. (AM. 45) | by the EP. | |

| Commission proposal (doc. 17635/13) 2. Member States shall by [36 months after publication of this Directive] and every two years thereafter, send the Commission such data. | Council GA (doc. 6603/15) | Orientation vote LIBE (A8-0165/2015) 2. Member States shall by* and every three years thereafter, send the Commission such data.(AM.45) * OJ: please insert date: two years after publication of this Directive. | Observations Presidency | Compromise proposal |
|--|--|--|----------------------------|---------------------|
| | | Article 7 | | |
| Non-regression clause | Non-regression clause | Non-regression clause | | |
| Nothing in this Directive shall be construed as limiting or derogating from any of the rights and procedural safeguards that are ensured under the Charter of Fundamental Rights of the European Union, the European Convention for the Protection of Human Rights and Fundamental Freedoms, or other relevant provisions of international law or the law of any Member State which provides a higher level of protection. | Nothing in this Directive shall be construed as limiting or derogating from any of the rights and procedural safeguards that are ensured under the Charter of Fundamental Rights of the European Union, the European Convention for the Protection of Human Rights and Fundamental Freedoms, or other relevant provisions of international law or the law of any Member State which provides a higher level of protection. | Nothing in this Directive shall be construed as limiting or derogating from any of the rights and procedural safeguards that are ensured under the Charter of Fundamental Rights of the European Union, the European Convention for the Protection of Human Rights and Fundamental Freedoms, or other relevant provisions of international law or the law of any Member State which provides a higher level of protection. | Agreement | |

| Commission proposal | Council GA | Orientation vote LIBE | Observations | Compromise | | |
|------------------------------|---------------------------------|---------------------------------|-------------------------------|------------|--|--|
| (doc. 17635/13) | (doc. 6603/15) | (A8-0165/2015) | Presidency | proposal | | |
| | Article 8 | | | | | |
| Transposition | Transposition | Transposition | | | | |
| 1. Member States shall | 1. Member States shall bring | 1. Member States shall bring | The transposition period is a | | | |
| bring into force the laws, | into force the laws, | into force the laws, | function of the scope of | | | |
| regulations and | regulations and | regulations and | obligations arising from this | | | |
| administrative provisions | administrative provisions | administrative provisions | Directive. Therefore it | | | |
| necessary to comply with | necessary to comply with | necessary to comply with this | seems appropriate to | | | |
| this Directive by [18 | this Directive by [24 months | Directive by [18 months after | discuss this issue at a later | | | |
| months after publication of | after publication of this | publication of this Directive]. | stage. | | | |
| this Directive]. They shall | Directive]. They shall | They shall immediately | | | | |
| immediately inform the | immediately inform the | inform the Commission | | | | |
| Commission thereof. | Commission thereof. | thereof. | | | | |
| 2.When Member States | 2. When Member States | 2. When Member States adopt | Agreement | | | |
| adopt those measures, they | adopt those measures, they | those measures, they shall | _ | | | |
| shall contain a reference to | shall contain a reference to | contain a reference to this | | | | |
| this Directive or shall be | this Directive or shall be | Directive or shall be | | | | |
| accompanied by such a | accompanied by such a | accompanied by such a | | | | |
| reference on the occasion of | reference on the occasion of | reference on the occasion of | | | | |
| their official publication. | their official publication. The | their official publication. The | | | | |
| The methods of making | methods of making such a | methods of making such a | | | | |
| such a reference shall be | reference shall be laid down | reference shall be laid down | | | | |
| laid down by the Member | by the Member States. | by the Member States. | | | | |
| States. | | - | | | | |
| 3. Member States shall | 3. Member States shall | 3. Member States shall | Agreement | | | |
| communicate to the | communicate to the | communicate to the | | | | |
| Commission the text of the | Commission the text of the | Commission the text of the | | | | |
| measures of national law | measures of national law | measures of national law | | | | |
| which they adopt in the | which they adopt in the field | which they adopt in the field | | | | |
| field covered by this | covered by this Directive. | covered by this Directive. | | | | |

| Commission proposal (doc. 17635/13) | Council GA (doc. 6603/15) | Orientation vote LIBE (A8-0165/2015) | Observations Presidency | Compromise |
|-------------------------------------|--------------------------------|--------------------------------------|----------------------------|------------|
| | (000.0003/15) | (A6-0105/2015) | Fresidency | proposal |
| Directive. | | | | |
| | | Article 9 | | |
| Entry into force | Entry into force | Entry into force | | |
| This Directive shall enter | This Directive shall enter | This Directive shall enter into | Agreement | |
| into force on the twentieth | into force on the twentieth | force on the twentieth day | | |
| day following that of its | day following that of its | following that of its | | |
| publication in the <i>Official</i> | publication in the Official | publication in the Official | | |
| Journal of the European | Journal of the European | Journal of the European | | |
| Union. | Union. | Union. | | |
| | | Article 10 | | |
| Addressees | Addressees | Addressees | | |
| This Directive is addressed | This Directive is addressed to | This Directive is addressed to | Agreement | |
| to the Member States in | the Member States in | the Member States in | _ | |
| accordance with the | accordance with the Treaties. | accordance with the Treaties. | | |
| Treaties. | | | | |