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NOTE

From:	Presidency
To:	Working Party on Substantive Criminal Law
No. prev. doc.:	17635/13 DROIPEN 160 COPEN 237 CODEC 2931
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 = Revised text following the meeting on 25 July 2014

I. INTRODUCTION

1. On 25 July 2014 the Working Party on Substantive Criminal Law completed a first examination of Articles 1 to 5 of the proposal for a Directive.¹² In this context delegations expressed also their views on some specific issues raised at CATS on 2 July 2014³.
2. Moreover, following an invitation by the Presidency, 10 delegations submitted written comments concerning the draft Directive (AT, DE, ES, FR, HR, HU, NL, PL, RO and SK)⁴.

¹ 17635/13 DROIPEN 160 COPEN 237 CODEC 2931 + ADD 1 + ADD 2 + ADD 3.

² IE and UK decided not to make use of the possibility to "opt-in" in the adoption of the proposed Directive, as referred to in Article 3 of Protocol (nr. 21) to Treaties; DK does not participate in accordance with Article 1 of Protocol (nr. 22) to the Treaties.

³ doc. 11997/14

⁴ doc. 13152/14 (multilingual)

3. Taking account of the proceedings at the meeting on 25 July and of the written contributions by Member States, the Presidency presents in the Annex a revised text of the draft Directive. Changes compared to the previous version are highlighted **in bold**. Some of the specific issues outlined at the meeting are presented in more details below.

II. SPECIFIC ISSUES

1. Scope of the proposal

4. As in CATS, a number of delegations expressed their support for the objectives of the Directive, while noting that certain aspects of the proposal would need further consideration. Some delegations reiterated their regrets that, as regards suspects and accused persons in criminal proceedings, the proposal is limited only to provisional legal aid and therefore does not establish minimum rules on the right to legal aid in criminal proceedings in their entirety, including when the person concerned is suspected or accused of having committed a serious criminal offence but has not been arrested. In general, however, delegations expressed their readiness to engage constructively in the discussion on the Commission proposal.
5. Several delegations requested to exclude explicitly **minor offences** from the scope of the Directive, as this was done in the other Directives on procedural rights, most recently in Article 2(4) of Directive 2013/48/EU on the right of access to a lawyer. Another group of delegations were of the opinion that minor offences are *de facto* already excluded from the scope of the proposal and therefore presenting the link to Directive 2013/48/EU in a clear manner would be sufficient to that effect.
6. It is recalled that the current proposal is indeed closely linked to Directive 2013/48/EU and aims to render effective the right of access to a lawyer when the person concerned wishes to make recourse to state funded assistance by a lawyer. Hence, Article 2(a) of the current proposal stipulates that the Directive shall apply to "suspects or accused persons in criminal proceedings, who are deprived of liberty and *who have a right of access to a lawyer pursuant to Directive 2013/48/EU*". Therefore, as regards minor offences, the current proposal only applies in the circumstances mentioned under Article 2(4) of Directive 2013/48/EU, namely during proceedings before a court having jurisdiction in criminal matters.

7. Furthermore, Directive 2013/48/EU fully applies "*where the suspect or accused person is deprived of liberty, irrespective of the stage of the criminal proceedings*". In this respect, it could be concluded that if the person has been arrested, including for a minor offence, the rights arising from the two Directives should be fully applicable.
8. In view of the above the Presidency has included a drafting suggestion in **recital 6** clarifying further the link of this proposal with Directive 2013/48/EU and has added references to the latter in the operative part of the text - see **Article 2(b) and Article 4(1)**.

2. Provisional legal aid in criminal proceedings

9. A number of aspects related to the concept of provisional legal aid introduced by the proposed Directive have been adjusted following the DROIPEN meeting on 25 July 2014.
10. Firstly, a clear distinction between provisional legal aid in criminal proceedings and European arrest warrant (EAW) proceedings has been drawn, as requested at the meeting. Article 4 deals solely with provisional legal aid in criminal proceedings, while all aspects related to EAW proceedings have been consolidated in Article 5. The headings have been brought in line with the corresponding provisions in Directive 2013/48/EU.
11. A number of delegations considered that the **concept of provisional legal aid** should be further clarified in order to draw a better distinction with "regular" legal aid. The Commission explained that it is necessary to provide a "temporal mechanism", where deprivation of liberty is the only condition triggering the right to provisional legal aid. Therefore, the inclusion of any other condition for making provisional legal aid available, such as the complexity of the case, the seriousness of the potential penalty or the capacity of the person to pay for a lawyer, would not be in line with the purpose of the Directive.
12. It was further clarified that the underlying objective of the proposal is to guarantee the effective exercise of the procedural rights of the suspect or accused person at the early stages of the proceedings, in particular by making sure that no questioning for the purposes of the criminal proceedings could take place without the assistance of a lawyer, unless the person has waived his right of access to a lawyer.

13. In view of the above, new elements emphasising the temporary and non-conditional nature of the provisional legal aid have been introduced in the respective definition in **Article 3(b)** together with a **new accompanying recital 12a**.
 14. Furthermore, as discussed and supported by a number of delegations at the last DROIPEN meeting, the **new recital 12b** clarifies the implementing obligations of the Member States in relation to provisional legal aid. It was concluded that when the existing national system on legal aid is constructed in such a way, that the application for "regular" legal aid could be fully processed, so as to allow the person concerned to have access to a state funded legal counsel promptly upon deprivation of liberty and before questioning, this should be considered sufficient to fulfil the objectives of the Directive, and therefore it would not be necessary to make additional arrangements for provisional legal aid.
 15. Delegations reiterated further the need to clarify the notions of "**deprivation of liberty**" and "**questioning**". It was agreed to work respectively on the basis of recital 21 of Directive 2012/13/EU and recital 20 of Directive 2013/48/EU. In this respect **new recitals 9a and 9b** were included in the revised text. For the purposes of defining the scope of application of the right to provisional legal aid, the situation when the person had to be brought to the court by the police because he did not appear although this was required under the law, was also addressed in the **new recital 9c**.
 16. Additional clarification as regards the temporal scope of the obligation to make available provisional legal aid were introduced in **Article 4(2) and (3)**.
 17. The **definition of legal aid** in **Article 3(a)** and the **accompanying recital 5** were also amended to address the concerns of the Member States relating to the scope of the provision, namely in relation to the meaning of "assistance from the Member State" in Article 3 and the definition covering also "the cost of proceedings" in recital 5.
- 3. Provisional legal aid and legal aid in European arrest warrant proceedings**
18. As already explained, for reasons of consistency and considering their specific nature, all provisions related to European arrest warrant proceedings, including those on provisional legal aid, have been consolidated in Article 5.

19. A number of Member States asked that the definition of "**requested person**" would be brought in line with the respective wording in Directive 2013/48/EU and that the triggering requirement for the application of the current proposal, namely the fact that the person has been arrested in the executing State, would be expressly included in the revised text. As a consequence, adaptations were introduced in **Article 1 (1) (b)**, **Article 2 (b)** and **Article 3 (c)** of the proposal.
20. The Commission proposal for **Article 5(2)** was referred to as the main point of concern for a majority of the Member States. The provision envisages an obligation for the issuing Member State to provide access to its legal aid system, when the requested person has the right to appoint a **lawyer in the issuing Member State for the purposes of the EAW proceedings** in the executing Member State and wishes to make use of this right.
21. Further to the arguments brought at CATS related to the practical implementation of the provision, the ensuing additional burden for the legal aid systems and the effectiveness of the EAW, Member States felt that the strictly ancillary role of the lawyer in the issuing Member State in EAW proceedings, namely to provide "*information and advice*", does not entail a real need for assistance through legal aid arrangements. In this respect, Member States raised substantial doubts on the need to keep this provision in the text.
22. The Commission defended its proposal and underlined the necessity to ensure that the right of access to a lawyer in the issuing Member State, as provided under Article 10 of Directive 2013/48/EU, is made effective, including by providing access to legal aid where needed.
23. As a compromise the Presidency suggests certain adaptations in **Article 5 (2)** stressing explicitly the assisting role of the lawyer in the issuing state and introducing a necessity criterion for the application of this provision - "*when and in so far as it has been demonstrated to be necessary*". Furthermore it is suggested to include also the provision of Article 10(6) of Directive 2013/48/EU in a **new Article 5(4)** to address the concerns raised by delegations in relation to the effectiveness of the EAW proceedings.

III. CONCLUSION

24. Member States are invited to consider the revised text of the Presidency in view of the next meeting of the Working Party, which is scheduled to take place on Friday, 19 September 2014.

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**

THE EUROPEAN PARLIAMENT AND THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty on the Functioning of the European Union, and in particular point (b) of Article 82(2),

Having regard to the proposal from the European Commission,

After transmission of the draft legislative act to the national Parliaments,

Having regard to the opinion of the European Economic and Social Committee,

Having regard to the opinion of the Committee of the Regions,

Acting in accordance with the ordinary legislative procedure,

Whereas:

- (1) The purpose of this Directive is to ensure the effectiveness of the right of access to a lawyer **as provided under Directive 2013/48/EU** by **making available** assistance by **a lawyer funded 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 ⁵ (European arrest warrant proceedings), **who have been arrested in the executing state.**

⁵ Council Framework Decision 2002/584/JHA of 13 June 2002 on the European arrest warrant and the surrender procedures between Member States (OJ L 190, 18.7.2002, p. 1).

- (2) By establishing minimum rules on the protection of procedural rights of suspects or accused persons, this Directive should strengthen the trust of Member State in criminal justice systems of other Member States and can thus help improve mutual recognition of decisions in criminal matters.
- (3) The Stockholm Programme⁶ put a strong focus on the strengthening of the rights of individuals in criminal proceedings. In its point 2.4, the European Council invited the Commission to put forward proposals, setting out a step by step approach⁷ to strengthening the rights of suspects or accused persons.
- (4) Three measures on procedural rights in criminal proceedings have been adopted to date, namely Directive 2010/64/EU of the European Parliament and of the Council⁸, Directive 2012/13/EU of the European Parliament and of the Council⁹ and Directive 2013/48/EU of the European Parliament and the Council.¹⁰
- (5) Legal aid should cover the costs of the defence ~~and the proceedings~~ for suspects or accused persons in criminal proceedings and requested persons in European arrest warrant proceedings.
- (5a) The term "lawyer" in this Directive refers to any person who, in accordance with national law, is qualified and entitled, including by means of accreditation by an authorised body, to provide legal advice and assistance to suspects or accused persons¹¹.**

⁶ OJ C 115, 4.5.2010, p. 1

⁷ OJ C 291, 4.12.2009, p. 1

⁸ 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).

⁹ 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.)

¹⁰ 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).

¹¹ Former Article 3 (d)

(6) The scope and content of the right to access to a lawyer are set out in Directive 2013/48/EU. The current Directive aims to render those rights effective when the person concerned exercises those rights. In respect of minor offences, Directive 2013/48/EU grants a right of access to a lawyer in the circumstances provided under Article 2 (4) thereof. Therefore, the application of this Directive to minor offences should be limited to the same circumstances. As Directive 2013/48/EU fully applies where the suspect or accused person is deprived of liberty, irrespective of the stage of the criminal proceedings, the rights arising from this Directive are also applicable where a person has been arrested, including for a minor offence.

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

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

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

- (9) In order for suspects or accused persons who are deprived of liberty to be in a position to exercise effectively the right of access to a lawyer at the early stages of the proceedings, they should not have to wait for access to a lawyer pending the processing of the application for legal aid and the assessment of the eligibility criteria for legal aid. Member States should therefore ensure that effective provisional legal aid is available without undue delay after the deprivation of liberty and before any questioning, and it should be available ~~at least~~ until the competent authority has taken the decision on legal aid and, in cases of full or partial rejection, this decision has become final, or, where the application for legal aid is granted, the appointment of the lawyer by the competent authority has taken effect.
- (9a) 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 course of criminal proceedings, suspects or accused persons are arrested or detained within the meaning of Article 5(1)(c) ECHR, as interpreted by the case-law of the European Court of Human Rights¹²**
- (9b) For the purposes of this Directive, temporary restrictions to liberty, such as preliminary questioning by the police or by another law enforcement authority the purpose of which is to identify the person concerned, to verify the possession of weapons or other similar safety issues or to determine whether an investigation should be started, for example in the course of a road-side check, or during regular random checks when a suspect or accused person has not yet been identified should not be considered as deprivation of liberty¹³.**
- (9c) Lawful arrest or detention of a person for non-compliance with the lawful order of a court or in order to secure the fulfilment of any obligation prescribed by law within the meaning of Article 5(1)(b) ECHR should not fall within the scope of this Directive. For instance, where a person is forcefully brought before a court after not complying with a lawful order to appear, the Directive should not apply.**

¹² This recital is based on recital 21 of Directive 2012/13/EU

¹³ This recital is based on recital 20 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 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.
- (11) Requested persons in European arrest warrant proceedings who are deprived of liberty should have the right to provisional legal aid upon deprivation of liberty in the executing Member State, **at least** until the competent authority has taken the decision on legal aid and, in cases of full or partial rejection, that decision has become final, or, where the application for legal aid is granted, the appointment of the lawyer by the competent authority has taken effect.
- (12) Member States should be able to provide that the costs relating to provisional legal aid for suspects or accused persons deprived of liberty and costs relating to provisional legal aid for requested persons can be recovered from those persons if, in the subsequent assessment of whether they have a right to legal aid, they are found to not meet the criteria to benefit from legal aid under national law.
- (12a) In view of the above, the provisional legal aid should be understood as a temporary in nature emergency mechanism for non-conditional access to legal aid in case of deprivation of liberty, subject to subsequent assessment according to the eligibility criteria for legal aid under national law and possible later restitution of the costs relating to provisional legal aid, which ensures the right to a fair trial in the early stages of the criminal proceedings upon arrest.**
- (12b) When the existing legal aid system in a Member State effectively provides access to State funded assistance by a lawyer for the suspect or accused person promptly after deprivation of liberty and before questioning in accordance with this Directive, this should be considered as complying with the obligations imposed by this Directive with respect to provisional legal aid.**

- (13) To ensure the effective access to a lawyer in the executing Member State for requested persons, Member States should ensure that such persons have access to legal aid until the surrender, or, in cases of non-surrender, until the decision on surrender has become final. The right to legal aid may be subject to an assessment of the means of the requested person and/or whether it is in the interests of justice to provide legal aid, according to the applicable eligibility criteria in the executing Member State in question.
- (14) To ensure that requested persons can effectively exercise their right to appoint a lawyer in the issuing Member State to assist the lawyer in the executing Member State, in accordance with Directive 2013/48/EU, the issuing Member State should ensure that requested persons have access to legal aid for the purpose of the European arrest warrant proceedings in the executing Member State. This right may be subject to an assessment of the means of the requested person and/or whether it is in the interests of justice to provide legal aid, according to the applicable eligibility criteria in the issuing Member State in question.
- (15) This Directive provides for the right to provisional legal aid for children deprived of liberty and to legal aid for children that are requested in European arrest warrant proceedings.
- (16) When implementing this Directive, Member States should ensure the respect of the fundamental right of legal aid as provided for in Articles 47(3) of the Charter and Article 6(3)(c) ECHR and ensure that legal aid is available to those who do not have sufficient resources to pay for legal assistance when the interest of justice so requires.
- (17) The Member States should collect data showing how the right to legal aid for suspects or accused persons and requested persons have been accessed. Member States should also collect data on the number of cases where provisional legal aid was provided for suspects or accused persons deprived of liberty, as well as for requested persons, and the number of cases where this right was not exercised. Such data should include the number of requests for legal aid in European arrest warrant proceedings when the Member State acts as issuing and executing State, as well as the number of cases where these requests were granted. Data on the costs for providing provisional legal aid for persons deprived of liberty and for requested persons should also be collected.

- (18) This Directive should apply to suspects or accused persons regardless of their legal status, citizenship or nationality. This Directive upholds the fundamental rights and principles recognised by the Charter of Fundamental Rights of the European Union and the European Convention on Human Rights, including the prohibition of torture and inhuman and degrading treatment, the right to liberty and security, respect for private and family life, the right to the integrity of the person, the rights of the child, integration of persons with disabilities, the right to an effective remedy and the right to a fair trial, the presumption of innocence and the rights of the defence. This Directive should be implemented in accordance with those rights and principles.
- (19) This Directive sets minimum rules. Member States may extend the rights set out in this Directive in order to provide a higher level of protection. Such higher level of protection should not constitute an obstacle to the mutual recognition of judicial decisions that those minimum rules are designed to facilitate. The level of protection should never fall below the standards provided by the Charter or the ECHR, as interpreted in the case-law of the Court of Justice and of the ECtHR.
- (20) Since the objectives of this Directive, namely setting common minimum rules for the right to legal aid for suspects or accused persons in criminal proceedings, cannot be sufficiently achieved by the Member States and can, by reason of the scale of the measure, be better achieved at Union level, the Union may adopt measures in accordance with the principle of subsidiarity as set out in Article 5 of the Treaty of the European Union. In accordance with the principle of 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 Articles 3 of Protocol No 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 European Union and to the Treaty on the Functioning of the European Union, those Member States have notified their wish to participate in the adoption and application of this Directive] OR~~ [In accordance with Articles 1 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 of this Directive and are not bound by it or subject to its application]¹⁴.
- (22) In accordance with 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,

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.

HAVE ADOPTED THIS DIRECTIVE:

Article 1

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 **proceedings pursuant to Framework Decision 2002/584/JHA** ("European arrest warrant proceedings") **upon their arrest in the executing Member State.**
2. This Directive **aims to render effective the rights provided under** Directive 2013/48/EU. Nothing in this Directive shall be interpreted as limiting the rights provided for in that Directive.

Article 2

Scope

This Directive shall apply to:

- a) suspects or accused persons in criminal proceedings, who are deprived of liberty and who have a right of access to a lawyer pursuant to Directive 2013/48/EU;
- b) requested persons **who are subject to European arrest warrant proceedings, upon arrest in the executing Member State, and who have a right of access to a lawyer pursuant to Directive 2013/48/EU.**

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.

Article 3

Definitions

For the purposes of this Directive, the following definitions shall apply:

- a) "legal aid" means funding ~~and assistance~~ by a Member State **of the assistance by a lawyer** ensuring the exercise of the right of access to a lawyer,
- b) "provisional legal aid" means **temporary legal aid, which is not subject to the eligibility criteria for legal aid applicable under national law, granted** to a person deprived of liberty until the **final** decision on legal aid has been taken **by the competent authority according to national law,**
- c) "requested person" means a person subject to a European arrest warrant **proceedings who has been arrested in the executing Member State.**
- d) (...) ¹⁵

Article 4

~~Access to~~ **Provisional legal aid in criminal proceedings**

1. Member States shall ensure that suspects or accused persons in criminal proceedings, who are deprived of liberty **and who have a right of access to a lawyer pursuant to Directive 2013/48/EU, the following persons, if they so wish** have the right to provisional legal aid.
 - (a) (...)
 - (b) (...)
2. Provisional legal aid shall be granted without undue delay after deprivation of liberty **and in any event** before **any** questioning **by the police, by another law enforcement authority or by a judicial authority for the purposes of the criminal proceedings in which the suspect or accused person is involved.**

¹⁵ The definition of a "lawyer" was moved to recital 5a, in line with Directive 2013/48/EU.

3. Provisional legal aid shall be ensured until the final decision on legal aid has been taken **by the competent authority** and
 - a) where the suspects or accused persons are granted legal aid, the appointment of the lawyer has taken effect; **or**
 - b) **in cases of full or partial rejection, this decision has become final.** ¹⁶
4. Member States shall ensure that provisional legal aid is provided to the extent necessary to **allow suspects or accused persons to** effectively exercise **their** right of access to a lawyer **under** Directive 2013/48/EU ~~on the right of access to a lawyer~~, in particular having regard to Article 3(3) **thereof**.
5. Member States **may** provide that the costs relating to provisional legal aid can be recovered from suspects or accused persons ~~and requested persons~~ who do not meet the eligibility criteria for legal aid as applicable under national law.

¹⁶ For reasons of clarity and consistency the text has been brought in line with recital 9

Article 5

Provisional legal aid and legal aid in European arrest warrant proceedings

1. The executing Member State shall ensure that requested persons have the right to legal aid upon arrest pursuant to a European arrest warrant until they are surrendered, or, in cases of non-surrender, until the decision on surrender has become final.
2. The issuing Member State shall ensure that requested persons, that exercise their right to appoint a lawyer in the issuing Member State to assist the lawyer in the executing Member State, according to Article 10 of Directive 2013/48/EU, have the right to legal aid in **the issuing Member State** for the purpose of the European arrest warrant proceedings in the executing Member State **when and in so far as it has been demonstrated to be necessary to ensure the assisting role of the lawyer in the issuing Member State.**
3. The right to legal aid referred to in paragraphs 1 and 2 may be subject to an assessment of the means of the requested person and/or whether it is in the interests of justice to provide legal aid, according to the applicable eligibility criteria in the Member State **concerned.**
4. **The right to legal aid in the issuing Member State of requested persons who exercise their right to appoint a lawyer in the issuing Member State is without prejudice to the time-limits set out in Framework Decision 2002/584/JHA or the obligation on the executing judicial authority to decide, within those time- limits and the conditions defined under that Framework Decision, whether the person is to be surrendered** ¹⁷
5. **Until a final decision on legal aid is taken, the executing Member State shall ensure that requested persons have the right to provisional legal aid in accordance with Article 4(2), 4(3), 4(5) of this Directive for the purposes of the European arrest warrant proceedings in the executing Member State upon arrest pursuant to EAW.**
6. **Member States shall ensure that provisional legal aid is provided to the extent necessary to allow suspects or accused 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.**

¹⁷ This provision replicates Article 10 (6) of Directive 2013/48/EU

Article 6

Provision of data

Member States shall by [36 months after publication of this Directive] and every two years thereafter, send to the Commission available data showing how the rights in Articles 4 and 5 have been implemented¹⁸.

Article 7

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.

¹⁸ The proposed text is brought in line with the agreed text in the General approach on the Children Directive

Article 8

Transposition

1. Member States shall bring into force the laws, regulations and administrative provisions necessary to comply with this Directive by *[18 months after publication of this Directive]*. They shall immediately inform the Commission thereof.
2. When Member States adopt those measures, they shall contain a reference to this Directive or shall be accompanied by such a reference on the occasion of their official publication. The methods of making such a reference shall be laid down by the Member States.
3. Member States shall communicate to the Commission the text of the measures of national law which they adopt in the field covered by this Directive.

Article 9

Entry into force

This Directive shall enter into force on the twentieth day following that of its publication in the *Official Journal of the European Union*.

Article 10

Addressees

This Directive is addressed to the Member States in accordance with the Treaties.

Done at Brussels,

For the European Parliament

The President

For the Council

The President