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NOTE

From:	Presidency
To:	Council
No. prev. doc.:	6327/15 DROIPEN 18 COPEN 56 CODEC 211
No. Cion 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 = General approach

1. On 27 November 2013, the Commission submitted a proposal for a Directive on provisional legal aid for suspects or accused persons deprived of liberty and legal aid in European arrest warrant proceedings.¹
2. The proposal refers to measure C of the Roadmap for strengthening procedural rights of suspects and accused persons in criminal proceedings.² It is closely linked to Directive 2013/48/EU on the Right of Access to a Lawyer.

¹ 17635/13 + ADD 1 + ADD 2 + ADD 3.

² OJ C 295, 4.12.2009, p. 1.

3. The Working Party on Substantive Criminal Law (DROIPEN) has been examining the proposal at regular monthly meetings since July 2014. CATS held an orientation debate on the draft Directive on 2 July 2014. On 23 October 2014 it addressed the issue of costs associated with granting legal aid in the issuing Member State for the purposes of the execution of an EAW in the executing Member State.
4. The Council took stock of the state of play of the negotiations on the file on 4 December 2014 and instructed that work at technical level should continue. On 25 February 2015 COREPER agreed on submitting the file to the Council.
5. The Council is invited to reach a general approach on the text, as set out in the Annex ³, which will constitute the basis for future negotiations with the European Parliament in the context of the ordinary legislative procedure.

³ Changes compared to the Commission proposal are marked in **bold**.

Proposal ⁴ ⁵ 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,

⁴ 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.

⁵ NL has a Parliamentary scrutiny reservation

Whereas:

(1) [transferred to recital 4a]

- (1a) Article 47, third subparagraph, of the Charter of Fundamental Rights of the European Union (the Charter), Article 6(3)(c) of the European Convention for the Protection of Human Rights and Fundamental Freedoms (the ECHR) and Article 14(3)(d) of the 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.**
- (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 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.**
- (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 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) [transferred to recital 4b]
- (2a) **On 30 November 2009, the Council adopted a Resolution on a Roadmap for strengthening the procedural rights of suspected or accused persons in criminal proceedings ('the Roadmap').⁶ Taking a step-by-step approach, the Roadmap calls for the adoption of measures regarding the right to translation and interpretation (measure A), the right to information on rights and information 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).**
- (3) (...) **On 11 December 2009, the European Council welcomed the Roadmap and made it part of the Stockholm programme - An open and secure Europe serving and protecting citizens (point 2.4).⁷ The European Council invited the Commission to put forward the foreseen proposals in the Roadmap for its swift implementation, on the conditions laid down therein, to examine further elements of minimum 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.**

⁶ OJ C 295, 4.12.2009, p. 1.

⁷ OJ C 115, 4.5.2010, p.1.

- (4) Three measures on procedural rights in criminal proceedings have been adopted to date, namely Directive 2010/64/EU of the European Parliament and of the Council of **20 October 2010 on the right to interpretation and translation in criminal proceedings**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**⁹, and 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**.¹⁰
- (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 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.**
- (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.

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).

- (5) [transferred to recital 7b]
- (6) (...)
- (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.
- (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 as a lawyer as described in Directive 2013/48/EU.**
- (7b)** Legal aid should cover the costs of the defence (...) for suspects or accused persons in criminal proceedings and requested persons in European arrest warrant proceedings.
- (8) (...)
- (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 **ordinary** legal aid and the assessment of the eligibility criteria for **ordinary** legal aid. Member States should therefore ensure that **when the person is deprived of liberty** effective provisional legal aid is available without undue delay and **at the latest** before questioning. **It** should be available (...) **until the person concerned is released or** until the competent authority has taken the **final** decision on **ordinary** legal aid and, (...) where the application for **ordinary** legal aid is granted, the appointment of the lawyer by the competent authority has taken effect **or in cases of (...) rejection, 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 minor offences, such as traffic offences, offences in relation to general municipal regulations or public order offences it would not be proportionate to require that the competent authorities should also ensure the right to provisional legal aid. Therefore, where according to the national law an authority other than a court having jurisdiction in criminal matters has competence for imposing sanctions regarding minor offences, provided the imposition of such a sanction may be appealed or otherwise referred to a court having jurisdiction in criminal matters, or where deprivation of liberty cannot be imposed as a sanction in respect of such minor offences, the right to provisional legal aid, as laid down by this directive, should not apply.**
- (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 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-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.**

- (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 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 competent authorities. This 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 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 European arrest warrant proceedings (...) should have the right to provisional legal aid upon deprivation of liberty in the executing Member State, (...) until the competent authority has taken the decision on **ordinary legal aid or the person concerned is released** and, in cases of (...) rejection, that decision has become final, or, where the application for **ordinary 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 **ordinary legal aid**, they are found to not meet the criteria to benefit from **ordinary legal aid** under national law.
- (12a) **Provisional legal aid should be understood as an emergency mechanism of a temporary nature for non-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 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 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 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 access to a lawyer in the executing Member State for requested persons, Member States should ensure that such persons have access to **ordinary** legal aid until the surrender, or, in cases of non-surrender, until the decision on **non-surrender** has become final. The right to **ordinary** 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 **ordinary** legal aid, according to the applicable eligibility criteria in the executing Member State in question.
- (14) (...)
- (15) (...) **Children are vulnerable and should be given a specific degree of protection. Therefore, in respect of the right to legal aid for children in criminal proceedings and for children who are subject to European arrest warrant proceedings, additional procedural safeguards are set out in Directive [...] on procedural safeguards for children suspected or accused in criminal proceedings.**¹¹
- (16) When implementing this Directive, Member States should ensure the respect of the fundamental right to legal aid as provided for in Article 47, the third paragraph of the Charter and Article 6(3)(c) of ECHR (...).

¹¹ This Directive is currently under consideration.

- (17) The Member States should collect **relevant** data, **from available data**, showing how the right to **provisional** legal aid for suspects or accused persons and requested persons has been accessed. **Such relevant data should, where possible, include** 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 **also, where possible, include** the number of requests for **ordinary** legal aid in European arrest warrant proceedings when the Member State acts as (...) executing State, as well as the number of cases where these requests were granted. **It should also include relevant** data on the costs for providing provisional legal aid for persons deprived of liberty and for requested persons **in these cases, insofar as such data is available**.
- (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 **out** 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 **provisional** legal aid for suspects or accused persons in criminal proceedings, **and for provisional legal aid and ordinary legal aid in European arrest warrant proceedings**, cannot be sufficiently achieved by the Member States **but can rather**, 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 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.¹²
- (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,

¹² 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 **ordinary** legal aid for requested persons who are subject to **proceedings pursuant to Framework Decision 2002/584/JHA** ("European arrest warrant proceedings").
2. This Directive **aims to** complement Directive 2013/48/EU **by rendering effective, in the cases referred to in Article 2(1), the right of access to a lawyer, as provided under Directive 2013/48/EU.**
3. Nothing in this Directive shall be interpreted as limiting the rights provided for in (...) Directive 2013/48/EU.

Article 2

Scope

1. 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.**
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 offences, and provided this is in conformity with the right to a fair trial, this Directive shall not apply:**
 - a. **where the law of a Member State provides for the imposition of a sanction by an authority other than a court having jurisdiction in criminal matters, and the imposition of such a sanction may be appealed or referred to such a court; or**
 - b. **where deprivation of liberty cannot be imposed as a sanction¹³.**

¹³ COM, FR, ES, PT, BE have a reservation regarding Article 2 (3) and (4).

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 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 law¹³.**

Article 3

Definitions

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.
- 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.**
- d) (...) ¹⁴

Article 4

(...) 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, (...) have the right to provisional legal aid.**
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 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.** ¹⁵
 - 2b. **In any event, provisional legal aid shall be granted when the suspect or accused person is brought before a competent court or judge in order to decide on provisional detention.**

¹⁴ See recital 7a.

¹⁵ COM, FR, ES, PT, BE, BG, IT, LT have a reservation on this provision.

3. Provisional legal aid shall be **provided** until **the person concerned is released or** a final decision on **ordinary** legal aid has been taken **by the competent authority** and:
 - a) where the suspects or accused persons are granted **ordinary** legal aid, the appointment of the lawyer has taken effect; **or**
 - b) **in cases of rejection, this decision has become final.**
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 (...), in particular having regard to 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.**
5. Member States **may** provide that the costs relating to provisional legal aid can be recovered from suspects or accused persons (...) who do not meet the eligibility criteria for **ordinary** legal aid as applicable under national law.

Article 5

Provisional legal aid and ordinary legal aid in 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 *mutatis mutandis* to European 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 State shall ensure that requested persons have the right to **ordinary** legal aid upon arrest pursuant to a European arrest warrant until they are surrendered, or, in cases of non-surrender, until the decision on **non-surrender** has become final.
 2. (...) ¹⁶
 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.

¹⁶ COM, FR, ES and PT object the deletion of this provision.

Article 6

Provision of data

Member States shall by [2 years after the date mentioned in Article 8 (1)] and every three years thereafter, send to the Commission available data showing how the rights in Articles 4 and 5 have been implemented.

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.

Article 8

Transposition

1. Member States shall bring into force the laws, regulations and administrative provisions necessary to comply with this Directive by [**24 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

For the Council

The President

The President
