



**COUNCIL OF
THE EUROPEAN UNION**

Brussels, 11 December 2013

**Interinstitutional File:
2013/0409 (COD)**

**17635/13
ADD 3**

**DROIPEN 160
COPEN 237
CODEC 2931**

COVER NOTE

from:	Secretary-General of the European Commission, signed by Mr Jordi AYET PUIGARNAU, Director
date of receipt:	28 November 2013
to:	Mr Uwe CORSEPIUS, Secretary-General of the Council of the European Union
No Cion doc.:	SWD(2013) 499 final
Subject:	Commission Staff Working Document Implementation Plan accompanying the proposal for a Directive of the European Parliament and of the Council on provisional legal aid for suspects or accused persons deprived of liberty and legal aid in European arrest warrant proceedings

Delegations will find attached Commission document SWD(2013) 499 final.

Encl.: SWD(2013) 499 final



Brussels, 27.11.2013
SWD(2013) 499 final

COMMISSION STAFF WORKING DOCUMENT

Implementation Plan

Accompanying the document

Directive of the European Parliament and the Council

**on provisional legal aid for suspects or accused persons deprived of liberty and legal aid
in European arrest warrant proceedings**

{ COM(2013) 824 final }
{ SWD(2013) 476 final }
{ SWD(2013) 477 final }

Implementation Plan¹

1. Title of the document for the proposed act:

Implementation Plan for a Directive of the European Parliament and the Council setting on the right to legal aid at the early stages of the proceedings for suspects and accused persons in criminal proceedings when they are deprived of liberty and for persons subject to proceedings pursuant to Council Framework Decision 2002/584/JHA on the European Arrest Warrant and Surrender Proceedings

2. Contact point: Johanna Engström, DG JUSTICE, Unit B1

3. Deliverables and implementation challenges

A number Member States will need to bring into force new legislation especially in relation to provisional legal aid to ensure that there is effective access to a lawyer free of charge at the earliest stages of the proceedings for persons deprived of liberty who do not already have a lawyer, and that there is access to legal aid in the issuing Member States in EAW proceedings. Yet this Directive creates a comparatively limited number of Member States' obligations and no major implementation challenges are expected.

Nevertheless, in order to ensure that the right of legal aid at the very first stages of the proceedings for persons deprived of liberty becomes a reality, effective mechanisms must be put in place in the Member States so that a rapid intervention of a lawyer in legal aid cases is made possible.

Consequently, besides the fact that detailed legal provisions should be envisaged on the matter, the implementation of the Directive should be accompanied by support actions in the Member States: (1) training of different actors in the criminal procedure (police, lawyers, prosecutors, judges); (2) Exchange on best practices in the EU criminal law group set up by COM

Implementation challenge	Support actions	Timing
<i>Besides legislative changes, a change is needed in the practice regarding legal aid in EAW proceedings and concerning provisional legal aid</i>	<i>(1) Training at national level of the different actors in the criminal procedure</i>	<i>During all the transposition period and beyond</i>
	<i>(2) Setting up a monitoring system at national level to gather data concerning breaches of presumption of innocence</i>	<i>To be prepared during the transposition period and to be operational at the latest on the deadline for transposition of the Directive</i>

Moreover, the smooth implementation will be ensured by the following detailed implementation strategy, which aims at solving all possibly emerging challenges at the beginning of the process. This approach has been followed for other Directives in the area of procedural rights in criminal proceedings (in particular in Directive 2012/29/EU establishing minimum standards on the rights and protection of victims of crime.

¹ This Implementation Plan is provided for information purposes only. It does not legally bind the Commission on whether the identified actions will be pursued or on the form in which they will be pursued.

Implementation Strategy for a Directive on the right to legal aid at the early stages of the proceedings for suspects and accused persons in criminal proceedings when they are deprived of liberty and for persons subject to proceedings pursuant to Council Framework Decision 2002/584/JHA on the European Arrest Warrant and Surrender Proceedings

The **purpose** of this document is to complement the document 'Implementation plan' by a detailed description of planned implementation strategy for a Directive on certain procedural rights strengthening the presumption of innocence in criminal proceedings. This model of implementation strategy has been used for the implementation of other Directives adopted so far in the area of procedural rights in criminal proceedings (Directive 2012/29/EU establishing minimum standards on the rights and protection of victims of crime).

Action to be taken	Description	Timeframe
Adoption of the Directive Publication in the Official Journal	<u>Implementation deadline: 18 months after OJ publication.</u>	OJ publication is the " <u>starting point</u> " in the <u>implementation process</u> (date "X")
Preparation of an explanatory working paper by COM with factual interpretation of all Articles in the Directive, including a transposition checklist for MS	The explanatory working paper will contain detailed explanations and expectations linked to the content of every Article and the corresponding Recitals, taking into account the medium/high level options from the Impact Assessment and also taking into account the negotiation process. They will also address how the provisions of this Directive will link to the existing legal framework, notably the Charter (and ECHR) and the Directives on procedural rights.	To be completed by X + 2 months
Letter to Member States	Content: <ul style="list-style-type: none"> • Invitation to experts' meeting • Asking Member States for information on their calendars for implementation; • Transmission of draft explanatory working paper and a set of questions for which Commission will seek MS input at the meeting. 	X + 2 months
Experts' meeting	In addition to Member States, Commission will invite EP Rapporteur	X + 4 months

	<p>and professional organisations to this meeting. Objectives of the meeting:</p> <ul style="list-style-type: none"> • Discussion of priorities in terms of implementation; • Asking Member States for information on their calendars for implementation (tour de table); • Receive input with a view to the fine-tuning of the Commissions implementation strategy; • Discussion of the draft explanatory working paper. 	
Implementation workshops	<p>Regular workshops (frequency depending on available resources): COM will organise workshops with MS (inviting also NGOs, practitioners, academics) in Brussels and/or at a regional basis (based on legal traditions, specific issues in the Directive, and the factual level of current implementation of the Directive's provisions).</p>	Starting from X + 6 months and regularly until 6 months before transposition deadline
Experts' meeting (half way through implementation)	<p>Objectives of the meeting:</p> <ul style="list-style-type: none"> • Receiving information on the state of implementation in the Member States; • Steer implementation process. 	1 year before transposition deadline
Bilateral meetings	<p>To work directly with MS on their implementation of the Directive, COM should organise meetings with national relevant stakeholders responsible for national implementation (e.g. Ministry of Justice, Interior, Police, Prosecution Office of the Government, Ministry of Social affairs, National Parliaments). COM will also cooperate with stakeholders to help with the preparation of the explanatory working paper and with specific issues arising in the implementation work. It is envisaged that current contacts with main networks of practitioners, e.g. the European Judicial Network (EJN) or organisations such as ECBA and CCBE, will become more systematic and strategic and regular informal meetings will be organised.</p>	Ad hoc, when and where necessary.
Final experts' meeting	<p>A final experts' meeting with all MS will be organised 6 months before the transposition deadline to take stock of national implementation measures. This meeting will help COM to understand what types of measures have or will be taken by the MS and also to alert COM to focus on some MS or issues that may need particular attention during the last months of the implementation period.</p>	6 months before transposition deadline.

<p>Accompanying soft law measures</p>	<p>COM supports a number of practical projects financed under JPEN. Identify upcoming needs and include as priorities in the calls for 2014, 2015 and 2016. Actions will be continued under the new Justice Programme (MFF 2014 - 2020).</p>	<p>On-going</p>
<p>Notification of transposition measures</p>	<p>An efficient and accessible system for receiving and examining MS notification of implementation measures needs to be put in place.</p>	