Legal aid for suspects and accused persons in criminal proceedings and for requested persons in European arrest warrant proceedings

2013/0409(COD) - 27/11/2013 - Legislative proposal

PURPOSE: to set out common minimum rules governing the right to provisional legal aid for suspects or accused persons in criminal proceedings.

PROPOSED ACT: Directive of the European Parliament and of the Council.

ROLE OF THE EUROPEAN PARLIAMENT: the European Parliament decides in accordance with the ordinary legislative procedure and on an equal footing with the Council.

BACKGROUND: the Stockholm Programme put a strong focus on the strengthening of the rights of individuals in criminal proceedings. The European Council asked the Commission to put forward proposals setting out a step by step approach to **strengthening the rights of suspects and accused persons.**

Up to now, three measures have been adopted: Directive 2010/64/EU on the right to interpretation and translation, Directive 2012/13/EU on the right to information and Directive 2013/48/EU on the right of access to a lawyer in criminal proceedings.

The proposal continues this work and is part of a **series of measures** on criminal justice which includes: (i) a directive on strengthening certain aspects of the presumption of innocence and of the right to be present at trial in criminal proceedings; (ii) a directive on procedural safeguards for children suspected or accused in criminal proceedings.

This measure is presented together with a Commission Recommendation on the right to legal aid for suspects or accused persons in criminal proceedings.

By establishing **minimum rules** on the protection of procedural rights of suspects or accused persons, this Directive should strengthen the mutual trust of judicial authorities and can thus help improve **mutual recognition** of decisions in criminal matters.

IMPACT ASSESSMENT: the Commission has undertaken an impact assessment in support of its proposal.

CONTENT :the draft directive aims to:

- ensure the effectiveness of the **right of access to a lawyer at an early stage in the criminal proceedings** for suspects and accused persons deprived of liberty;

- ensure that requested persons in **European arrest warrant proceedings** have access to legal aid to ensure the right of access to a lawyer in both the executing and issuing Member State ("right of dual defence").

The directive will apply from the **deprivation of liberty**, i.e. as from the moment one is taken into police custody or similar custody, which also covers periods before formal charge and arrest has taken place.

Provisional legal aid: it is in the early phase of the proceedings, especially if deprived of liberty, that suspects or accused persons will be the most vulnerable and most in need of legal aid to be assisted by a lawyer. Therefore, the draft directive makes provisions for provisional legal aid.

The proposal states the exercise of the right to provisional legal aid and access to a lawyer must become practicable and effective **without undue delay after deprivation of liberty and before any questioning.** The right to provisional legal aid should last at least until the competent authority has made the final decision on whether the suspect or accused person is eligible and benefits from legal aid.

The right to provisional legal aid also applies to requested persons in European arrest warrant proceedings who are deprived of liberty.

Legal aid for requested persons: in order to improve mutual trust and make the **right to dual defence** in European arrest warrant proceedings effective (in both the executing and issuing Member State), the Directive also requires Member States to give access to legal aid, beyond provisional legal aid as the requested persons are not always deprived of liberty.

In the period leading up to the final decision on whether the requested person benefits from legal aid in the executing Member State, requested persons that are deprived of liberty are entitled to provisional legal aid in the executing Member State

Non-regression clause: the proposal aims to ensure that setting common minimum standards does not have the effect of lowering existing higher standards in certain Member States and the standards in the Charter and the European Convention on Human Rights.