Brussels, 25 June 2014

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NOTE

from:	incoming Italian Presidency
to:	CATS
No. Prop.:	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 - Orientation debate

1.   On 28 November 2013 the Commission submitted to the European Parliament and to the

Council 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]. This proposal

refers to measure C of the Roadmap for strengthening procedural rights of suspected and

accused persons in criminal proceedings[2] and is closely linked to Directive 2013/48/EU on the

Right of Access to a Lawyer[3].

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[1]   17635/13 DROIPEN 160 COPEN 237 CODEC 2931 + ADD 1 +ADD 2 + ADD 3
[2]   OJ C 295, 4.12.2009, p. 1.
[3]   OJ L 294, 6.11.2013, p. 1.

2. The proposal aims to establish common minimum rules on the right to provisional legal aid for suspects and accused persons in criminal proceedings and for provisional legal aid and legal aid for "requested persons" in European arrest warrant proceedings, thereby rendering effective the rights provided under Directive 2013/48/EU and in particular having regard to Article 3 (3) thereof.

Provisional Legal Aid (Article 4)

3. The temporal scope of the obligation to make provisional legal aid available extends from the moment the suspect or accused in criminal proceedings is deprived of liberty and before any questioning has taken place until the final decision on legal aid comes into effect. It should be noted that there might be cases which although related to short- term interferences with personal freedom might not require effective exercise of defence rights and therefore might not result in activating the rights provided under this Directive, e.g. identification checks, preliminary questioning in the course of a random check which might provide indications for the opening of a criminal investigation, etc.

European Arrest Warrant proceedings(Article 4 and Article 5)

4. Similarly to Directive 2013/48/EU this proposal establishes rules in relation to EAW proceedings. The requested person should be entitled to the right of provisional legal aid and legal aid from the moment he is deprived of liberty in the executing state. The requested person should have access to the provisional legal aid arrangements in the executing state until the final decision on legal aid comes into effect. From this point onwards, legal aid should be made available until the person is surrendered or in case of non-surrender until this decision has become final.

5. The current proposal provides for rules based on the principle of "dual defence" both in the issuing and the executing state in EAW proceedings. Thus, when the requested person has made use of the possibility to appoint a lawyer in the issuing state, as provided under Article 10 (5) of Directive 2013/48/EU, the issuing state has to ensure that the person has access to legal aid also in that state for the purposes of the EAW proceedings in the executing state.

6.   Furthermore, in conformity with the ECHR the draft directive recognises the possibility for the Member States of making the legal aid applications in EAW proceedings subject to a means and merits test, while the specific eligibility criteria are to be defined in accordance with the national law.

Question for CATS:

Before starting the detailed examination of the proposal at working group level, the Presidency would like to hold an orientation debate in CATS which will guide the subsequent expert debate in DROIPEN. In this respect, delegations are invited to express their general views on the Commission proposal, in particular in relation to Article 4 and Article 5 thereof.

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