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Introduction

The last meeting of the Friends of the Presidency took place on 4 April 2016. At this meeting, Articles 5, 6, 7, and 8 (formerly called Articles 5, 4b, 5a and 5b) were discussed.

It was noted at the meeting that the work on Articles 2 and 4 could be started once the results of the impact assessment (IA) commissioned by the European Parliament would be available and the European Parliament would have defined a position in respect of this IA.

Mid-April, a draft IA has become available. On 26 April 2016, the European Parliament had a strategic meeting on the basis of this draft. Subsequently to the introduction of some refinements, this draft has been distributed to delegations (see WK 312/2016).

On 3 May 2016, the 7th trilogue took place (in the Justus Lipsius building of the Council). Before and after the trilogue, the Presidency also had some informal contacts with the rapporteur.

Two issues were discussed:

- a) Articles 5, 6, 7 and 8;
- b) The IA and the position of the European Parliament in this respect.

Articles 5, 6, 7 and 8: European arrest warrant, timely and diligent procedures, quality of legal aid services and training, and remedies

At the meeting of the Friends of the Presidency on 4 April 2016, Articles 5 (EAW), 6 (timely and diligent procedures), 7 (quality of legal aid services and training) and 8 (remedies), as well as the additional proposals of the European Parliament on the European Investigation Order, were discussed.

In view of the comments made by delegations at the said meeting, the Presidency slightly revised the texts, and submitted these to the European Parliament in view of the trilogue. The texts are set out in the Annex.

At the trilogue, the European Parliament showed general satisfaction with the text as presented by the Presidency. It expressed reservations on three points, however:

- a) The European Parliament would like to make clearer what "involvement" in the recital under Article 6 exactly means; the Parliament will come up with a text proposal in this regard;
- b) The European Parliament would like to define "legal aid services" in Article 3; a drafting suggestion has been inserted in that Article;
- c) The European Parliament would like to delete the recital under Article 8.

Q1: The Presidency invites delegations to express their opinion on points b) and c) (insertion of a definition of legal aid services and deletion of the recital under Article 8). Would the suggestions of the European Parliament, on which the Presidency takes a positive view, be acceptable to delegations?

On a general note, the Presidency is aware that parts of the texts of Articles 5, 6, 7 and 8 are still problematic for some Member States. The Presidency is hopeful, however, that these Member States might be able to join the majority view and accept these texts, it being understood that agreement to these texts is subject to satisfactory agreement being reached on the other parts of the text, notably on Articles 2 (scope) and 4 (legal aid in criminal proceedings)¹.

¹ In support of the current text of Article 5(2), the Presidency earlier advanced the following arguments (see doc 7378/16):

- 1) A provision on legal aid for the lawyer in the issuing Member State is politically very important, both for the European Parliament and for the Commission.
- 2) In budgetary terms, granting - in certain circumstances - legal aid to the lawyer in the issuing Member State is not a major issue. The additional costs are minor, as has also been indicated in the impact assessment of the Commission.
- 3) On the other hand, it cannot be excluded that in individual cases granting legal aid to the lawyer in the issuing Member State can be very important for the person concerned.
- 4) The compromise text of the Presidency states that legal aid should (only) be provided in the issuing Member State "*insofar such aid is necessary to ensure effective access to justice*". These words, which have directly been taken from Article 47(3) of the Charter, leave a certain flexibility for the Member States in providing legal aid when they act as issuing Member States, as was also confirmed by the Council Legal Service during the meeting on 16 March 2016. The Presidency observes by the way that the Charter has the same legal value as the Treaties, and that the Directive should anyway be applied in conformity with the Charter. Hence, it does not seem to make a big difference whether the proposed text will be laid down in the Directive or not.

Articles 2, 3 and 4: scope, definitions and legal aid in criminal proceedings

During the trilogue, the European Parliament informed the Council and the Commission of its considerations following the presentation of the draft IA.

According to the European Parliament,

- The IA demonstrates that the amendments as proposed by the LIBE Committee would enhance the protection of suspects and accused persons from a Fundamental Rights point of view;
- The costs for Member States because of these amendments would increase, although seen as total costs for the whole European Union it would still be reasonable.

In the light of the IA, the European Parliament has formulated the following wishes during the trilogue and/or during the informal contacts between the Presidency and the rapporteur:

1) **Legal aid**

In criminal proceedings, it has become clear to the Presidency that the European Parliament would like the Directive to apply to *legal aid* - not to *provisional legal aid*. The rapporteur has indicated that the European Parliament considers the concept of provisional legal aid needlessly complicated and that it has no added value for citizens. If it helps Member States to provide provisional legal aid in the first phase of the proceedings, they are free to do so, but this should not be an obligation, on condition that legal aid is provided in a timely manner.

Furthermore it has been indicated that if the concept of provisional legal aid were included in the Directive, the European Parliament would only allow a "clawback" provision based on false information having been provided - in all other cases it should not be possible to ask money provided as provisional legal aid back.

In the light of the above, the Presidency has announced during the trilogue that it would submit the question to the Member States whether the concept of "legal aid" could be used instead of "provisional legal aid", also since many Member States have already indicated in the past that they could very well live without the concept of provisional legal aid, which many Member States currently do not use in their legal systems.

Q2: Member States are invited to indicate if they can accept, in principle, that the concept of "legal aid" be used instead of "provisional legal aid".

2) Only deprivation of liberty ?

The European Parliament observed that the ECHR, as interpreted by the ECtHR, does not make a distinction between persons who are deprived of liberty or those who are not deprived of liberty. Legal aid should be given when it is required in the interests of justice². The European Parliament therefore asked to delete the restriction to deprivation of liberty and to refer to a notion as used in the ECHR, such as "when required in the interests of justice".

The Presidency observed that the notion of "deprivation of liberty" is also used by the Commission in its proposal, and that this Directive does not have to regulate all aspects; some aspects could be left to the ECHR and its case-law, as has been done in other Directives.

As a compromise, the Presidency suggests that the Directive should not apply to situations other than deprivation of liberty, except as regards the investigative or evidence-gathering acts referred to in Article 3(3)(c) of Directive 2013/48/EU on access to a lawyer.

Q3: Member States are invited to indicate if they could accept that the Directive applies to situations of deprivation of liberty only, except as regards the investigative or evidence-gathering acts referred to in Article 3(3)(c) of Directive 2013/48/EU, in respect of which it should apply whether the person is deprived of liberty or not.

² 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 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.

3) Options on the way forward

In the light of the draft IA, the European Parliament has internally discussed four options on the way forward as regards the issue of legal aid in criminal proceedings:

1. *Continuation of the trilogue with the remaining articles of the draft Directive, trying to bring the scope of the Directive in line with Directive 2013/48/EU in accordance with the EP's position, whilst freezing the already agreed texts;*
2. *Continuation of the trilogue with the remaining articles of the draft Directive whilst freezing the already agreed texts. Compromises could consist of limiting the scope, for example to 'deprivation of liberty +', by including situations of questioning, identity parades, confrontations and reconstructions of the scene of a crime; or, alternatively, by referring to a more general criterion, such as a proportionality test; or, alternatively, by a broader definition of minor offences than was used in the Directive on access to a lawyer;*
3. *Limitation of the scope of the Directive to European Arrest Warrant-cases and the criminal proceedings following the surrender of the requested person to the issuing State, and possibly to criminal offences mentioned in Article 2(2) of Framework Decision (2002/584/JHA) on the EAW. The addition could be justified by the fact that there is no reason why legal aid for requested persons should be any different from legal aid for suspects or accused persons in non-EAW cases. The elaboration of this option also requires further compromises as mentioned in option 2);*
4. *Limitation of the scope of the Directive to European Arrest Warrant-cases for now and request the Commission to submit a new proposal for legal aid in other cases.*

The result of the internal discussions in the European Parliament is that it prefers to work on option 2, which seems the most realistic option in order to reach tangible results. The Presidency itself is also charmed by option 3, which provides a clear delimitation of the scope. The rapporteur indicated that he would happily submit this position to the EP again if it would fly with the Council.

On the basis of the above-mentioned elements, the Presidency redrafted the text of Articles 1-8.

The two options are set out in the Annexes: option 2 (in annex I) and option 3 (in annex II). As delegations will see, many parts of the text are imported from the general approach (6603/15).

Q4: Member States are invited to scrutinise these texts carefully and to indicate whether they could be acceptable for them.

Concluding remarks

The European Parliament from its side will also have a look at concrete texts. Following the discussion in the Working Party on 11 May 2016, and in the light of the results of the internal Parliament considerations, a comparison between the texts will be made to see where common ground can be found.

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

[OPTION 2]

Article 1

Subject-matter

1. This Directive lays down minimum rules concerning:
 - a) the right to legal aid for suspects or accused persons in criminal proceedings who are deprived of liberty; and
 - b) the right to 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 ensuring that legal aid is made available to persons who lack sufficient resources³ and so rendering effective, in the cases referred to in Article 2(1), the right of access to a lawyer, as provided under that Directive.
3. Nothing in this Directive shall be interpreted as limiting the rights provided for in Directive 2013/48/EU.

³ See EP amendment 2 (DS 1287/15).

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) suspects or accused persons in criminal proceedings, who have a right of access to a lawyer pursuant to Directive 2013/48/EU because they are required or permitted to attend an investigative or evidence-gathering act as referred to in Article 3(3)(c) of that Directive, including as a minimum the following:
 - (i) identity parades;
 - (ii) confrontations;
 - (iii) reconstructions of the scene of a crime.
 - c) 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 sanction.

4. Provided this is in conformity with the right to a fair trial, this Directive shall not apply in situations where a person has been deprived of liberty 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 law.⁴

⁴ Alternatively, this text could be replaced by a recital along the following line (compare recital 28 of the Children Directive):

(XX) Provided that this complies with the right to a fair trial, the obligation for Member States to provide legal aid in accordance with this Directive does not include the following: identifying the suspect or accused person; determining whether an investigation should be started; verifying the possession of weapons or other similar safety issues; carrying out investigative or evidence-gathering acts other than those specifically referred to in this Directive, such as body checks, physical examinations, blood, alcohol or similar tests, or the taking of photographs or fingerprints; or bringing the suspect or accused person to appear before a competent authority, in accordance with national law.

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) **"legal aid services" means legal assistance and representation by a lawyer that is funded by legal aid.**⁵
- c) "requested person" means a person subject to European arrest warrant proceedings who has been arrested in the executing Member State.

⁵ **New definition, which the EP suggested inserting in Article 3.**

Article 4
Legal aid in criminal proceedings

1. Member States shall ensure that suspects or accused persons have the right to legal aid when this is required in the interests of justice.
2. Upon request of the suspect or accused person,⁶ legal aid shall be granted without undue delay, and at the latest before questioning by the police, by another law enforcement authority or by a judicial authority, or before the investigative or evidence-gathering acts mentioned in Article 2(1)(b). 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.⁷
3. 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 legal aid is in principle not granted.⁸

⁶ NB: suspects and accused persons are informed of their right to legal aid in conformity with Article 3(1)(b) of Directive 2012/13/EU.

⁷ Possible accompanying recital:

(XX) The competent authorities should grant legal aid without undue delay and at the latest before questioning of the person concerned by the police, by another law enforcement authority or by a judicial authority, or before the specific investigative or evidence-gathering acts mentioned in this Directive. If the authorities are not able to grant legal aid in a timely manner, they should at least grant emergency or provisional legal aid before such questioning or before such investigative or evidence-gathering acts take place.

⁸ Possible accompanying recital:

(XX) In respect of less serious offences, such as theft of an item of little value or public order offences, Member States should be allowed to provide that legal aid is granted only if this is required in the interests of justice, in line with Article 6(3)(c) of the ECHR.

4. Without prejudice to paragraph 6,
- a) Member States shall in any event ensure that legal aid is granted in the following situations:
- (i) when suspects or accused persons are brought before a competent court or judge in order to decide on detention at any stage of the proceedings within the scope of this Directive; and
- (ii) during detention.
- b) Member States shall ensure that deprivation of liberty is not imposed as a criminal sentence unless the suspect or accused person, who has requested legal aid, has received such aid.⁹
5. Member States shall ensure that 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.
6. The right to legal aid referred to in this Article may be subject to an assessment of the means of the suspect or accused person, according to the applicable criteria in the Member State in question.

⁹ Possible accompanying recital:

(XX) Member States shall ensure that deprivation of liberty is not imposed as a criminal sentence, unless the suspect or accused person, who has requested legal aid, has received such aid, it being understood that a means test may be applicable. This should not preclude the imposition, in situations where legal aid has not been granted, of deprivation of liberty as a sentence that is alternative to another sentence or measure, such as the obligation to pay a financial penalty or to carry out a community service.

Article 5

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 non-surrender has become final.¹⁰
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 in accordance with Article 10(4) and (5) of Directive 2013/48/EU, have the right to legal aid in that Member State for the purpose of the European arrest warrant proceedings in the executing Member State, insofar as such aid is necessary to ensure effective access to justice.¹¹
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, according to the applicable criteria in the Member State in question.

¹⁰ Accompanying recital:

Given the specificity of European arrest warrant proceedings, the interpretation of the provisions of this Directive relating solely to requested persons under Framework Decision 2002/584/JHA should take into account this specificity and not prejudice in any way the interpretation of the remaining provisions of this Directive.

¹¹ Accompanying recital:

In European arrest warrant proceedings, requested persons should be entitled to legal aid in the executing Member State. In addition, requested persons, who exercise the right to appoint a lawyer in the issuing Member State in accordance with Directive 2013/48/EU, should have the right to legal aid in that Member State (...) for the purpose of the European arrest warrant proceedings in the executing Member State, insofar as such aid is necessary to ensure effective access to justice, as stipulated in Article 47 of the Charter. This would be the case when the lawyer in the executing Member State cannot fulfil his or her tasks as regards the execution of a European arrest warrant effectively and efficiently without the assistance of a lawyer in the issuing Member State. Any decision as regards granting legal aid in European arrest warrant proceedings in the issuing Member State should be taken by an authority that is competent for taking decisions on legal aid in that State.

Article 6 (previously 4b)

Timely and diligent decisions by a competent authority

1. Decisions on whether or not to grant legal aid, and the assignment of lawyers, shall be made without undue delay by a competent authority. Member States shall take appropriate measures to ensure that any such authority takes its decisions diligently, and in respect of the rights of defence.¹²
2. Member States shall take necessary measures to ensure that suspects or accused persons in criminal proceedings, and requested persons in European arrest warrant proceedings, are informed in writing when their application for legal aid is rejected in full or in part.

¹² Accompanying recital:

*Without prejudice to provisions of national law concerning the mandatory presence of a lawyer, decisions on whether or not to grant legal aid should be made without undue delay by a competent authority, which should be an independent authority competent for taking decisions regarding legal aid, or a court, including a judge sitting alone. In urgent situations the involvement of the police and the prosecution should however also be possible when this is necessary for granting such aid **in a timely manner**. (...)*

NB: the EP may present a drafting suggestion in respect of the last sentence of this recital.

Article 7 (previously 5a)

Quality of legal aid services and training

1. Member States shall take the necessary action, including with regard to funding, with the aim to ensure
 - a) that there is an effective and qualitative legal aid system; and
 - b) that legal aid services are of a quality that is adequate to safeguard the fairness of the proceedings, with due respect for the independence of the legal profession.¹³
2. Member States shall ensure that adequate training is provided to staff involved in the decision-making on legal aid in criminal proceedings and in European arrest warrant proceedings.
3. With due respect for the independence of the legal profession and for the role of those responsible for the training of lawyers, Member States shall take appropriate measures to promote the provision of adequate training to lawyers providing legal aid services.
4. Member States shall take the necessary measures to ensure that suspects or accused persons in criminal proceedings, and requested persons in European arrest warrant proceedings, have the right, upon their request, to have the lawyer providing legal aid services assigned to them replaced, when the specific circumstances **so justify**.

¹³ Accompanying recital:

Where legal aid has been granted to a suspect or accused or requested person, one way of ensuring the effectiveness and quality of that legal aid is to facilitate continuity in legal representation for that suspect or accused persons. In that respect, Member States should facilitate continuity of legal representation throughout the criminal proceedings, including - where relevant - European arrest warrant proceedings.

Article 8 (previously 5b)

Remedies

Member States shall ensure that suspects and accused persons in criminal proceedings, as well as requested persons in European arrest warrant proceedings, have an effective remedy under national law in the event of a breach of their rights under this Directive. Such a remedy shall include the right to challenge before a court, not only a decision refusing legal aid in full or in part, but also an undue delay in taking a decision on legal aid.¹⁴

¹⁴ Former accompanying recital, which the EP suggests deleting:

[There should be an effective remedy under national law in the event of a breach of the rights under this Directive. This remedy should in any case include the right to challenge such a breach before a court. National law may require that the person concerned should firstly lodge a complaint within the authority that has taken the contested decision, or which should have taken a decision but failed to do so, before this person may challenge a breach before a court.]

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

[OPTION 3]

Article 1

Subject-matter

1. This Directive lays down minimum rules concerning:
 - a) the right to legal aid for suspects or accused persons in criminal proceedings who are deprived of liberty; and
 - b) the right to 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 ensuring that legal aid is made available to persons who lack sufficient resources and so rendering effective, in the cases referred to in Article 2(1), the right of access to a lawyer, as provided under that Directive.
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
 - (i) are deprived of liberty;
 - (ii) are suspected or accused of having committed one or more criminal offences listed in Article 2(2) of Framework Decision 2002/584/JHA; and
 - (iii) have the right of access to a lawyer pursuant to Directive 2013/48/EU;
 - b) suspects or accused persons in criminal proceedings, who have a right of access to a lawyer pursuant to Directive 2013/48/EU because they are required or permitted to attend an investigative or evidence-gathering act as referred to in Article 3(3)(c) of that Directive, including as a minimum the following:
 - (i) identity parades;
 - (ii) confrontations;
 - (iii) reconstructions of the scene of a crime.
 - c) 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.

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 law.¹⁵

¹⁵ Alternatively, this text could be replaced by a recital along the following line (compare recital 28 of the Children Directive):

(XX) Provided that this complies with the right to a fair trial, the obligation for Member States to provide legal aid in accordance with this Directive does not include the following: identifying the suspect or accused person; determining whether an investigation should be started; verifying the possession of weapons or other similar safety issues; carrying out investigative or evidence-gathering acts other than those specifically referred to in this Directive, such as body checks, physical examinations, blood, alcohol or similar tests, or the taking of photographs or fingerprints; or bringing the suspect or accused person to appear before a competent authority, in accordance with national law.

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) **"legal aid services" means legal assistance and representation by a lawyer that is funded by legal aid.** ¹⁶
- c) "requested person" means a person subject to European arrest warrant proceedings who has been arrested in the executing Member State.

¹⁶ **New definition, which the EP suggested inserting in Article 3.**

Article 4
Legal aid in criminal proceedings

1. Member States shall ensure that suspects or accused persons have the right to legal aid.
2. Upon request of the suspect or accused person, legal aid shall be granted without undue delay, and at the latest before questioning by the police, by another law enforcement authority or by a judicial authority, or before the investigative or evidence-gathering acts mentioned in Article 2(1)(b). 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.¹⁷
3. Member States shall ensure that 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.
4. The right to legal aid referred to in this Article may be subject to an assessment of the means of the suspect or accused person, according to the applicable criteria in the Member State in question.

¹⁷ Possible accompanying recital:

(XX) The competent authorities should grant legal aid without undue delay and at the latest before questioning of the person concerned by the police, by another law enforcement authority or by a judicial authority[, or before the specific investigative or evidence-gathering acts mentioned in this Directive]. If the authorities are not able to grant legal aid in a timely manner, they should at least grant emergency or provisional legal aid before such questioning or before such investigative or evidence-gathering acts take place.

Article 5

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 non-surrender has become final.¹⁸
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 in accordance with Article 10(4) and (5) of Directive 2013/48/EU, have the right to legal aid in that Member State for the purpose of the European arrest warrant proceedings in the executing Member State, insofar as such aid is necessary to ensure effective access to justice.¹⁹
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, according to the applicable criteria in the Member State in question.

¹⁸ Accompanying recital:

Given the specificity of European arrest warrant proceedings, the interpretation of the provisions of this Directive relating solely to requested persons under Framework Decision 2002/584/JHA should take into account this specificity and not prejudice in any way the interpretation of the remaining provisions of this Directive.

¹⁹ Accompanying recital:

In European arrest warrant proceedings, requested persons should be entitled to legal aid in the executing Member State. In addition, requested persons, who exercise the right to appoint a lawyer in the issuing Member State in accordance with Directive 2013/48/EU, should have the right to legal aid in that Member State (...) for the purpose of the European arrest warrant proceedings in the executing Member State, insofar as such aid is necessary to ensure effective access to justice, as stipulated in Article 47 of the Charter. This would be the case when the lawyer in the executing Member State cannot fulfil his or her tasks as regards the execution of a European arrest warrant effectively and efficiently without the assistance of a lawyer in the issuing Member State. Any decision as regards granting legal aid in European arrest warrant proceedings in the issuing Member State should be taken by an authority that is competent for taking decisions on legal aid in that State.

Article 6 (previously 4b)

Timely and diligent decisions by a competent authority

1. Decisions on whether or not to grant legal aid, and the assignment of lawyers, shall be made without undue delay by a competent authority. Member States shall take appropriate measures to ensure that any such authority takes its decisions diligently, and in respect of the rights of defence.²⁰
2. Member States shall take necessary measures to ensure that suspects or accused persons in criminal proceedings, and requested persons in European arrest warrant proceedings, are informed in writing when their application for legal aid is rejected in full or in part.

²⁰ Accompanying recital:

*Without prejudice to provisions of national law concerning the mandatory presence of a lawyer, decisions on whether or not to grant legal aid should be made without undue delay by a competent authority, which should be an independent authority competent for taking decisions regarding legal aid, or a court, including a judge sitting alone. In urgent situations the involvement of the police and the prosecution should however also be possible when this is necessary for granting such aid **in a timely manner**. (...)*

Article 7 (previously 5a)

Quality of legal aid services and training

1. Member States shall take the necessary action, including with regard to funding, with the aim to ensure
 - a) that there is an effective and qualitative legal aid system; and
 - b) that legal aid services are of a quality that is adequate to safeguard the fairness of the proceedings, with due respect for the independence of the legal profession.²¹
2. Member States shall ensure that adequate training is provided to staff involved in the decision-making on legal aid in criminal proceedings and in European arrest warrant proceedings.
3. With due respect for the independence of the legal profession and for the role of those responsible for the training of lawyers, Member States shall take appropriate measures to promote the provision of adequate training to lawyers providing legal aid services.
4. Member States shall take the necessary measures to ensure that suspects or accused persons in criminal proceedings, and requested persons in European arrest warrant proceedings, have the right, upon their request, to have the lawyer providing legal aid services assigned to them replaced, when the specific circumstances **so justify**.

²¹ Accompanying recital:

Where legal aid has been granted to a suspect or accused or requested person, one way of ensuring the effectiveness and quality of that legal aid is to facilitate continuity in legal representation for that suspect or accused persons. In that respect, Member States should facilitate continuity of legal representation throughout the criminal proceedings, including - where relevant - European arrest warrant proceedings.

Article 8 (previously 5b)

Remedies

Member States shall ensure that suspects and accused persons in criminal proceedings, as well as requested persons in European arrest warrant proceedings, have an effective remedy under national law in the event of a breach of their rights under this Directive. Such a remedy shall include the right to challenge before a court, not only a decision refusing legal aid in full or in part, but also an undue delay in taking a decision on legal aid.²²

²² [Accompanying recital, which EP wants to be deleted:

There should be an effective remedy under national law in the event of a breach of the rights under this Directive. This remedy should in any case include the right to challenge such a breach before a court. National law may require that the person concerned should firstly lodge a complaint within the authority that has taken the contested decision, or which should have taken a decision but failed to do so, before this person may challenge a breach before a court.]