

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

Commission proposal (doc. 17635/13)	Council GA (doc. 6603/15)	Orientation vote LIBE (A8-0165/2015)
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	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	Proposal for a Directive of the European parliament and of the Council on (...) legal aid for suspects or accused persons (...) and legal aid in European arrest warrant proceedings <i>(AM.1)</i>
		<i>(-1) Article 6(3)(c) of the European Convention for the Protection of Human Rights and Fundamental Freedoms (ECHR) and Article 14(3)(d) of the International Covenant on Civil and Political Rights, recognise the right to legal aid for those who do not have sufficient means themselves to pay for legal assistance, where the interests of justice so require. (AM.2)</i>
		<i>(-1a) The third paragraph of Article 47 of the Charter of Fundamental Rights of the European Union ('the Charter') provides that legal aid is to be made available to those who lack sufficient resources in so far as such aid is necessary to ensure effective access to justice. (AM.3)</i>
		<i>(-1b) The United Nations Principles and Guidelines on Access to Legal Aid in Criminal Justice Systems^{1a} provide for a comprehensive framework on the right</i>

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		<p><i>to legal aid. (AM.4)</i></p> <hr/> <p><i>^{1a.} Adopted by the General Assembly of the United Nations through its Resolution A/Res/67/187 of 20 December 2012.</i></p>
<p>(1) The purpose of this Directive is to ensure the effectiveness of the right of access to a lawyer by providing assistance by the Member States for persons deprived of liberty at an early stage in the criminal proceedings and for requested persons in surrender procedures pursuant to Council Framework Decision 2002/584/JHA¹ (European arrest warrant proceedings).</p>	<p>(1) [transferred to recital 4a] (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.</p>	<p>(1) The purpose of this Directive is to ensure the effectiveness of the right of access to a lawyer <i>as provided under Directive 2013/48/EU of the European Parliament and of the Council by making available assistance by a lawyer funded by the Member States for suspects or accused persons and for requested persons in surrender procedures pursuant to Council Framework Decision 2002/584/JHA (European arrest warrant proceedings).</i> <i>The scope of this Directive is determined, in particular, by the relevant provisions of Directive 2013/48/EU. (AM.5)</i></p>
	<p>{See recital -1a) new of the EP position (AM3) } (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</p>	<p><i>(-1a) The third paragraph of Article 47 of the Charter of Fundamental Rights of the European Union ('the Charter') provides that legal aid is to be made available to those who lack sufficient resources in so far as such aid is necessary to ensure effective access to justice. (AM.3)</i></p>

¹ Council Framework Decision 2002/584/JHA of 13 June 2002 on the European arrest warrant and the surrender procedures between Member States (OJ L 190, 18.7.2002, p.

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	<p>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.</p>	
	<p>{See recitals 2a), 3 and 3a) of the EP position (AMs 6, 7 and 8)} (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.</p>	
	<p>(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</p>	

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	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) 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 improve mutual recognition of decisions in criminal	(2) [transferred to recital 4b] (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	(2) 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 improve mutual recognition of decisions in criminal matters.

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matters.	recognition of decisions in criminal matters.	
	<p>{See recital 3a)of the EP position (AM8)}</p> <p>(2a) 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').² 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).</p>	<p><i>(3a) On 30 November 2009, the Council adopted a resolution on a Roadmap for strengthening procedural rights of suspected or accused persons in criminal proceedings. It proposed to introduce several legislative initiatives including the right to the assistance of a legal adviser and legal aid in criminal proceedings (measure C).(AM 8).</i></p>
		<p><i>(2a) In accordance with Article 82(2) of the Treaty on the Functioning of the European Union (TFEU), to the extent to that it is necessary to facilitate the mutual recognition of judgments and judicial decisions and police and judicial cooperation in criminal matters having a cross-border dimension, the European Parliament and the Council may, by means of directives adopted in accordance with the ordinary legislative procedure, establish minimum</i></p>

² OJ C 295, 4.12.2009, p. 1.

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		<i>rules. Such rules are to take into account the differences between the legal traditions and systems of the Member States. They are to cover, in particular, the rights of individuals in criminal procedure. (AM. 6)</i>
(3) The Stockholm Programme ³ put a strong focus on the strengthening of the rights of individuals in criminal proceedings. In its point 2.4, the European Council invited the Commission to put forward proposals, setting out a step by step approach ⁴ to strengthening the rights of suspects or accused persons.	(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).⁵ 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.	(3) The Stockholm Programme ² put a strong focus on the strengthening of the rights of individuals in criminal proceedings. In its point 2.4, the European Council invited the Commission to put forward proposals, setting out a step by step approach ³ to strengthening the rights of suspects or accused persons, <i>in particular the right to legal advice and legal aid (measure C). (AM. 7)</i>
		See recital 2a of the GA <i>(3a) On 30 November 2009, the Council adopted a resolution on a Roadmap for strengthening procedural rights of suspected or accused persons in criminal proceedings. It proposed to introduce</i>

³ OJ C 115, 4.5.2010, p. 1

⁴ OJ C 291, 4.12.2009, p. 1

⁵ OJ C 115, 4.5.2010, p.1.

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		<i>several legislative initiatives including the right to the assistance of a legal adviser and legal aid in criminal proceedings (measure C).(AM 8)</i>
(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 ⁶ , Directive 2012/13/EU of the European Parliament and of the Council ⁷ and Directive 2013/48/EU of the European Parliament and the Council. ⁸	(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 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 ¹⁰ , 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	(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 ⁴ <i>on the right to interpretation and translation</i> , Directive 2012/13/EU of the European Parliament and of the Council ⁵ <i>on the right to information</i> and Directive 2013/48/EU <i>on the right to access to a lawyer 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.</i> (AM 9)

⁶ 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).

⁷ 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.)

⁸ 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).

⁹ 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).

¹⁰ 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.)

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	upon deprivation of liberty and to communicate with third persons and with consular authorities while deprived of liberty. ¹¹	
	{See recital 1 of COM proposal and Recital 1 of the EP position(AM. 5)} (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.	
	{See recital 2 of COM proposal} (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	

¹¹ 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).

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	criminal justice systems of other Member States and can thus help to improve mutual recognition of decisions in criminal matters.	
(5) Legal aid should cover the costs of the defence and the proceedings for suspects or accused persons in criminal proceedings and requested persons in European arrest warrant proceedings.	[Transferred to recital 7b] (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.	(5) Legal aid should cover the costs of the defence and the proceedings for suspects or accused persons in criminal proceedings and requested persons in European arrest warrant proceedings.
(6) The scope and content of the right to access to a lawyer are set out in Directive 2013/48/EU. A suspect or accused person in criminal proceedings should have the right of access to a lawyer from the time when they are made aware, by official notification or otherwise, by the competent authorities, that they are suspected or accused of having committed a criminal offence, and irrespective of whether they are deprived of liberty. That right applies until the conclusion of the proceedings, which is understood to mean the final determination of the question whether the suspect or accused person has committed the offence, including where applicable, sentencing and the resolution of any appeal.	[deleted]	<i>[deleted](AM 10)</i>
		<i>(6a) In accordance with Directive 2013/48/EU, legal aid is provided in the Member States in accordance with the Charter and the ECHR. Where suspects or</i>

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		<i>accused persons are deprived of liberty, Member States should make the necessary arrangements to ensure that such persons are in a position to exercise their right of access to a lawyer effectively, including by arranging for the assistance of a lawyer where the persons concerned do not have one, unless they have waived that right. Under this directive, such arrangements could include those on legal aid if applicable. (AM. 11)</i>
(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.	(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.	<i>[deleted](AM. 12)</i>
	(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.	
	See recital 5 (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) Directive 2013/48/EU provides that	[deleted]	<i>[deleted] (AM 13)</i>

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<p>in cases where suspects or accused persons are deprived of liberty, Member States should make the necessary arrangements to ensure that they are in a position to exercise effectively their right of access to lawyer, unless they have waived this right.</p>		
<p>(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 legal aid and the assessment of the eligibility criteria for legal aid. Member States should therefore ensure that effective provisional legal aid is available without undue delay after the deprivation of liberty and before any questioning, and it should be available at least until the competent authority has taken the decision on legal aid and, in cases of full or partial rejection, this decision has become final, or, where the application for legal aid is granted, the appointment of the lawyer by the competent authority has taken effect.</p>	<p>(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.</p>	<p>(9) In order for suspects or accused persons (...) 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 legal aid and the assessment of the eligibility criteria for legal aid. Member States should therefore ensure that effective provisional legal aid is available without undue delay (...) before <i>the performance of any procedural step which, under national or Union law, has to be carried out in the presence of a lawyer,</i> and it should be available at least until the competent authority has taken the decision on legal aid and, in cases of full or partial rejection, this decision has become final, or, where the application for legal aid is granted, the appointment of the lawyer by the competent authority has taken effect. (AM 14)</p>

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	<p>(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.</p> <p>See Recital 13a) and 13b) new of the EP Position (AMs 21 and 22)</p>	<p><i>(13a) In some Member States certain minor offences, in particular minor traffic offences, minor offences in relation to general municipal regulations and minor public order offences, are considered to be criminal offences. In such situations, it would be unreasonable to require that the competent authorities ensure all the rights under this Directive. Where the law of a Member State provides in respect of minor offences that deprivation of liberty cannot be imposed as a sanction, this Directive should therefore apply only to the proceedings before a court having jurisdiction in criminal matters.</i></p> <p><i>(13b) The scope of this Directive in respect of certain minor offences should not affect the obligations of Member States under the ECHR to ensure the right to a fair trial including obtaining legal assistance from a lawyer.</i></p>
	<p>(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.</p>	

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	<p>(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.</p>	
	<p>(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.</p>	
		<p><i>(9a) This Directive should allow for differences in</i></p>

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		<i>the Member States' legal aid systems. Each Member State should be responsible for the granting of legal aid. Legal aid should be granted subject to an assessment of the financial means of the applicant ('means test') and/or of whether it is in the interests of justice to provide legal aid in the case concerned ('merits test'). (AM. 15)</i>
(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 the 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.	(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	(10) The Member States should ensure that (...) legal aid is provided to the extent necessary and is not limited in a way that prevents the 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. (AM 16)

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	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	

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	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 who are deprived of liberty should have the right to provisional legal aid upon deprivation of liberty in the executing Member State, at least until the competent authority has taken the decision on legal aid and, in cases of full or partial rejection, that decision has become final, or, where the application for legal aid is granted, the appointment of the lawyer by the competent authority has taken effect.	(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.	(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, at least until the competent authority has taken the decision on legal aid and, in cases of full or partial rejection, that decision has become final, or, where the application for legal aid is granted, the appointment of the lawyer by the competent authority has taken effect. <i>(AM 17)</i>
(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	(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	(12) Member States should be able to provide that the costs relating to provisional legal aid for suspects or accused persons (...) and costs relating to provisional legal aid for requested persons <i>may</i> be recovered from those persons if, in the subsequent assessment and final decision by the competent authority of whether they have a right to ordinary legal aid, they are found

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<p>assessment of whether they have a right to legal aid, they are found to not meet the criteria to benefit from legal aid under national law.</p>	<p>ordinary legal aid, they are found to not meet the criteria to benefit from ordinary legal aid under national law.</p>	<p>to not meet the criteria to benefit from <i>ordinary</i> legal aid under national law, <i>and if they intentionally provided the competent authorities with false information on their personal financial situation. In order to ensure that any recovery of costs relating to provisional legal aid does not prejudice the suspect or accused or requested person in such a way as to undermine the overall fairness of the proceedings, Member States should ensure that the conditions attached to recovery of costs are clear and reasonable and take account of the specific financial situation of the suspect, accused or requested person.</i> (AM 18)</p>
	<p>(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.</p>	
	<p>(12b) In some Member States there is no distinction between provisional and</p>	

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	<p>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.</p>	
	<p>(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.</p>	
	<p>(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</p>	

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	<p>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.</p>	
	<p>(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.</p>	
<p>(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 legal aid until the surrender, or, in cases of</p>	<p>(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-</p>	<p>(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 legal aid until the surrender, or, in cases of non-surrender, until the decision on surrender has</p>

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<p>non-surrender, until the decision on surrender has become final. The right to 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 legal aid, according to the applicable eligibility criteria in the executing Member State in question.</p>	<p>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.</p>	<p>become final. The right to legal aid may be subject to <i>a means test</i> and/or <i>to a merits test, in accordance with</i> the applicable eligibility criteria in the executing Member State in question. (AM 19)</p>
	<p>See Recital 9a) new of the Council GA</p>	<p><i>(13a) In some Member States certain minor offences, in particular minor traffic offences, minor offences in relation to general municipal regulations and minor public order offences, are considered to be criminal offences. In such situations, it would be unreasonable to require that the competent authorities ensure all the rights under this Directive. Where the law of a Member State provides in respect of minor offences that deprivation of liberty cannot be imposed as a sanction, this Directive should therefore apply only to the proceedings before a court having jurisdiction in criminal matters.</i></p>
	<p>See Recital 9a) new of the Council GA</p>	<p><i>(13b) The scope of this Directive in respect of certain minor offences should not affect the obligations of Member States under the ECHR to ensure the right to a fair trial including obtaining legal assistance from a lawyer.</i></p>
<p>(14) To ensure that requested persons can effectively exercise their right to appoint a lawyer in the issuing Member State to assist the lawyer in the executing Member State, in accordance with Directive</p>	<p>[deleted]</p>	<p>(14) To ensure that requested persons can effectively exercise their right to appoint a lawyer in the issuing Member State to assist the lawyer in the executing Member State, in accordance with Directive 2013/48/EU, the issuing Member State should ensure</p>

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<p>2013/48/EU, the issuing Member State should ensure that requested persons have access to legal aid for the purpose of the European arrest warrant proceedings in the executing Member State. This right 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 legal aid, according to the applicable eligibility criteria in the issuing Member State in question.</p>		<p>that requested persons have access to <i>provisional legal aid and to legal aid</i> for the purpose of <i>legal representation in that Member State to assist the lawyer</i> in the executing Member State <i>in the course of European arrest warrant proceedings. The right to legal aid</i> may be subject to a means <i>test</i> and/or <i>merits test, in accordance with</i> the applicable eligibility criteria in the issuing Member State in question. (AM. 22)</p>
<p>(15) This Directive provides for the right to provisional legal aid for children deprived of liberty and to legal aid for children that are requested in European arrest warrant proceedings.</p>	<p>(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.</p>	<p>(15) This Directive provides for the right to provisional <i>and ordinary</i> legal aid for <i>vulnerable suspects or accused or requested persons. Children are particularly vulnerable so particular attention should be paid to them and special measures should be taken in accordance with Directive ... on procedural safeguards for children suspected or accused in criminal proceedings.</i> (AM. 23)</p>
<p>(16) When implementing this Directive, Member States should ensure the respect of the fundamental right of legal aid as provided for in Articles 47(3) of the Charter and Article 6(3)(c) ECHR and ensure that legal aid is available to those who do not have sufficient resources to pay for legal assistance when the interest of justice so requires.</p>	<p>(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 (...).</p>	<p>(16) When implementing this Directive, Member States should ensure the respect of the fundamental right of legal aid as provided for in <i>the third paragraph of</i> Article 47 of the Charter and <i>in</i> Article 6(3)(c) of the ECHR and ensure that legal aid is available to <i>applicants on the basis of a means test and/or of a merits test. In doing so, they should respect the United Nations Principles and Guidelines on Access to Legal Aid in Criminal Justice Systems.</i></p>

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		<i>Where the granting of legal aid is subject to a means test, such a test should take into account considerations particular to vulnerable suspects or accused persons. (AM. 24)</i>
		<i>(16a) The principle of effectiveness of Union law requires that Member States put in place adequate and effective remedies in the event of a breach of a right conferred upon individuals by Union law. An effective remedy should be available, where the provision of legal aid has been undermined, delayed or refused where suspects or accused persons have not been adequately informed of their right to legal aid and where provisions about eligibility or cost recovery have been unclear. Therefore, persons applying for legal aid should have the right to appeal a decision refusing legal aid. (AM.25)</i>
(17) The Member States should collect data showing how the right to legal aid for suspects or accused persons and requested persons have been accessed. Member States should also collect data on 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 include the number of requests for legal aid in European arrest warrant proceedings when the Member State acts as issuing and executing State,	(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	(17) The Member States should collect data showing how the right to legal aid for suspects or accused persons and requested persons have been accessed. Member States should also collect data on the number of cases where legal aid was provided for suspects or accused persons, as well as for requested persons, and the number of cases where this right was not exercised. Such data should include the number of requests for legal aid in European arrest warrant proceedings when the Member State acts as issuing and executing State, as well as the number of cases where these requests were granted. Data on the costs for providing (...) legal aid for <i>suspects or accused persons</i> and for requested persons should also be

<p align="center">Commission proposal (doc. 17635/13)</p>	<p align="center">Council GA (doc. 6603/15)</p>	<p align="center">Orientation vote LIBE (A8-0165/2015)</p>
<p>as well as the number of cases where these requests were granted. Data on the costs for providing provisional legal aid for persons deprived of liberty and for requested persons should also be collected.</p>	<p>(...) 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.</p>	<p>collected.(AM. 26)</p>
<p>(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.</p>	<p>(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.</p>	<p>(18) This Directive should apply to suspects or accused persons regardless of their legal status, citizenship or nationality, <i>sex, race, colour, ethnic or social origin, genetic features, language, religion or belief, political or any other opinion, membership of a national minority, property, birth, disability, residence status, age, sexual orientation or any other status.</i> 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. (AM.27)</p>
<p>(19) This Directive sets minimum rules. Member States may extend the rights set out in this Directive in order to provide a</p>	<p>(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</p>	<p>(19) This Directive sets minimum rules. Member States may extend the rights set out in this Directive in order to provide a higher level of protection. Such</p>

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<p>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.</p>	<p>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.</p>	<p>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. <i>Under no circumstances should this Directive be interpreted as restricting the rights and guarantees afforded by national legal systems which offer a higher level of protection.</i> (AM. 28)</p>
<p>(20) Since the objectives of this Directive, namely setting common minimum rules for the right to legal aid for suspects or accused persons in criminal proceedings, cannot be sufficiently achieved by the Member States and can, 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.</p>	<p>(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.</p>	<p>(20) Since the objectives of this Directive, namely setting common minimum rules for the right to legal aid for suspects or accused persons in criminal proceedings, cannot be sufficiently achieved by the Member States and can, 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.</p>
<p>(21) [In accordance with Articles 3 of Protocol No 21 on the position of the United Kingdom and Ireland in respect of</p>	<p>(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</p>	

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<p>the Area of Freedom, Security and Justice, annexed to the Treaty on European Union and to the Treaty on the Functioning of the European Union, those Member States have notified their wish to participate in the adoption and application of this Directive] OR [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.</p>	<p>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.¹³</p>	
<p>(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.</p>	<p>identical</p>	<p>identical</p>

¹² The final wording of this recital in the Directive will depend on the position of the United Kingdom and Ireland taken in accordance with the provisions of protocol No 21.

¹³ 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.

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Subject-matter	Subject-matter	Subject-matter
<p>1. This Directive lays down minimum rules concerning:</p> <p>(a) the right to provisional legal aid for suspects or accused persons in criminal proceedings who are deprived of liberty, and</p> <p>(b) the right to provisional legal aid and to legal aid for requested persons who are subject to European arrest warrant proceedings.</p>	<p>1. This Directive lays down minimum rules concerning:</p> <p>(a) the right to provisional legal aid for suspects or accused persons in criminal proceedings who are deprived of liberty, and</p> <p>(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").</p>	<p>1. This Directive lays down minimum rules concerning:</p> <p>(a) the right to provisional <i>and ordinary</i> legal aid for suspects or accused persons in criminal proceedings (...) and (AM. 29)</p> <p>(b) the right to provisional <i>and ordinary</i> legal aid for requested persons who are subject to European arrest warrant proceedings. (AM. 29)</p>
<p>2. This Directive complements Directive 2013/48/EU. Nothing in this Directive shall be interpreted as limiting the rights provided for in that Directive.</p>	<p>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.</p>	<p>2. This Directive complements Directive 2013/48/EU on the right of access to a lawyer. Nothing in this Directive shall be interpreted as limiting the rights provided for in that Directive. (AM. 31)</p>
	<p>3. Nothing in this Directive shall be interpreted as limiting the rights provided for in (...) Directive 2013/48/EU.</p>	
Scope	Scope	Scope
<p>This Directive shall apply to:</p> <p>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;</p>	<p>1. This Directive shall apply to:</p> <p>(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;</p>	<p>1. This Directive shall apply to:</p> <p>(a) suspects or accused persons in criminal proceedings (...) who have a right of access to a lawyer pursuant to Directive 2013/48/EU or any legally binding Union instrument on procedural safeguards for child suspects; (AM. 31)</p> <p>(b) requested persons <i>as defined in point (c) of Article</i></p>

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b) requested persons.	(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.	<i>3 of this Directive.(AM. 31)</i>
	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.	<i>2. Without prejudice to the right to a fair trial, in respect of minor offences: (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; this Directive shall only apply to the proceedings before a court having jurisdiction in criminal matters. In any event, this Directive shall fully apply where the suspect or accused person is deprived of liberty, irrespective of the stage of the criminal proceedings.</i>

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	<p>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:</p> <p>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;</p> <p>b) in order to verify the possession of weapons or other similar safety issues;</p> <p>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;</p> <p>d) in order to bring the suspect or accused person to appear before a competent authority in accordance with rules provided by national law</p>	(AM. 31)
Definitions	Definitions	Definitions
<p>For the purposes of this Directive, the following definitions shall apply:</p> <p>a) legal aid means funding and assistance from the Member State ensuring the exercise of the right of access to a lawyer,</p>	<p>For the purposes of this Directive, the following definitions shall apply:</p> <p>(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.</p>	<p>For the purposes of this Directive, the following definitions shall apply:</p> <p>(a) "ordinary legal aid" means funding and assistance from the Member State ensuring the exercise of the right of access to a lawyer;(AM. 32)</p>
<p>b) provisional legal aid means legal aid to a person deprived of liberty until the</p>	<p>(b) "provisional legal aid" means temporary legal aid, which is not subject to the</p>	<p>(b) "provisional legal aid" means legal aid (...) provided until the decision on ordinary legal aid has</p>

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decision on legal aid has been taken,	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.	been taken <i>and has come into effect;</i> (AM. 33)
c) "requested person" means a person subject to a European arrest warrant,	(c)"requested person" means a person subject to European arrest warrant proceedings who has been arrested in the executing Member State.	c) "requested person" means a person subject to a European arrest warrant,
d) "lawyer" means any person, who, in accordance with national law, is qualified and entitled, including by means of accreditation by an authorised body, to provide legal advice and assistance to suspects or accused persons.	[deleted] See recital 7a (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.	(d) " legal aid lawyer" means any person, who, in accordance with national law, is qualified and entitled, including by means of accreditation by an authorised body, to provide legal advice, assistance <i>and representation</i> to suspects or accused persons. (AM. 34)
Access to provisional legal aid	(...) Provisional legal aid in criminal proceedings	Access to provisional legal aid
1. Member States shall ensure that the following persons, if they so wish, have the right to provisional legal aid: (a) suspects or accused persons in criminal proceedings, who are deprived of liberty; (b) requested persons deprived of liberty in the executing Member State.	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.	1. Member States shall ensure that the following persons, if they so wish, have the right to provisional legal aid: (a) suspects or accused persons in criminal proceedings, <i>who have the right of access to a lawyer pursuant to Directive 2013/48/EU or any legally binding Union instrument on procedural safeguards for child suspects;</i> (AM 35) (b) requested persons, <i>who have the right of access to a lawyer pursuant to Directive 2013/48/EU both in</i>

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		<i>the executing and in the issuing Member State, in accordance with Article 10 of that Directive or any legally binding Union instrument on procedural safeguards for child suspects. (AM 35)</i>
<p>2. Provisional legal aid shall be granted without undue delay after deprivation of liberty and in any event before questioning.</p>	<p>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.</p>	<p>2. Provisional legal aid shall be granted without undue delay (...) and in any event before questioning. (AM. 36)</p>
	<p>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.</p>	
	<p>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.</p>	

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<p>3. Provisional legal aid shall be ensured until the final decision on legal aid has been taken and comes into effect, or, where the suspects or accused persons are granted legal aid, the appointment of the lawyer has taken effect.</p>	<p>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:</p> <p>a) where the suspects or accused persons are granted ordinary legal aid, the appointment of the lawyer has taken effect; or</p> <p>b) in cases of rejection, this decision has become final.</p>	<p>3. Provisional legal aid shall be ensured until the final decision on legal aid has been taken and <i>has come</i> into effect, <i>and until either of the following:</i></p> <p><i>(a) where legal aid has been granted, the appointment of the lawyer has taken effect; or</i></p> <p><i>(b) where legal aid has been refused, the decision has become final and the suspect or accused person or the requested person has had a reasonable opportunity to find a lawyer of his or her choice.(AM. 37)</i></p>
<p>4. Member States shall ensure that provisional legal aid is provided to the extent necessary to effectively exercise the right of access to a lawyer in Directive 2013/48/EU on the right of access to a lawyer, in particular having regard to Article 3 (3).</p>	<p>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.</p>	<p>4. Member States shall ensure that provisional legal aid is provided to the extent necessary to effectively exercise the right of access to a lawyer in Directive 2013/48/EU on the right of access to a lawyer, in particular having regard to Article 3 (3).</p>
	<p>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.</p>	
		<p><i>4a. Member states shall ensure that provisional legal aid also includes, where necessary, interpretation for communication between the person deprived of liberty and the lawyer in accordance with Directive 2010/64/EU, in particular having regard to Article 2(2) thereof. (AM. 38)</i></p>
<p>5. Member States shall be able to provide</p>	<p>5. Member States may provide that the costs</p>	<p>5. Member States <i>may</i> provide that, <i>exceptionally</i>, the</p>

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<p>that the costs relating to provisional legal aid can be recovered from suspects or accused persons and requested persons who do not meet the eligibility criteria for legal aid as applicable under national law.</p>	<p>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.</p>	<p>costs relating to provisional legal aid can be recovered from suspects or accused persons and requested persons <i>if it is established through a final decision that those persons</i> do not meet the eligibility criteria for <i>ordinary</i> legal aid as applicable under national law, <i>and if they have intentionally provided the competent authorities with false information on their personal financial situation. In order to ensure that any recovery of costs relating to provisional legal aid does not prejudice the suspect or accused person or the requested person in such a way so as to undermine the overall fairness of the proceedings, Member States shall ensure that the conditions attached to recovery of costs are clear and reasonable and take account of the specific financial situation of the suspect or accused person or the requested person.</i>(AM. 39)</p>
		<p><i>1. Member States shall ensure that the persons referred to in Article 4(1) may obtain access to legal aid if they lack sufficient financial means to meet part or all of the costs of their defence and the proceedings (‘means test’) and/or where it is in the interests of justice to provide legal aid (‘merits test’).</i></p>
		<p><i>2. The means test shall be based on all relevant and objective factors, such as income, capital, family situation, standard of living and the cost of a legal aid lawyer.</i></p>
		<p><i>3. The merits test shall include an assessment of the</i></p>

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		<i>urgency and complexity of the case, the seriousness of the offence and the severity of the potential penalty that may be imposed, as well as the social and personal circumstances of the suspect or accused person or the requested person concerned.</i>
		<i>4. Member States shall make all relevant information on legal aid in criminal proceedings easily accessible and understandable to suspects or accused persons and requested persons, including information on how and where to apply for such aid, transparent criteria on eligibility for legal aid, as well as information on the possibilities available in circumstances where access to legal aid is refused or a legal aid lawyer provides insufficient legal assistance.</i>
		<i>Decisions on whether or not to grant legal aid, and the assignment of lawyers, shall be made promptly by an independent competent authority. Member States shall ensure that the responsible authorities make decisions diligently and that there are substantial guarantees against arbitrariness. (AM. 41)</i>
Legal aid for requested persons	Provisional legal aid and ordinary legal aid in European arrest warrant proceedings	Legal aid for requested persons
	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),	

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	4(4a) and 4(5) of this Directive, which shall apply <i>mutatis mutandis</i> 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 legal aid upon arrest pursuant to a European arrest warrant until they are surrendered, or, in cases of non-surrender, until the decision on surrender has become final.	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.	1. The executing Member State shall ensure that requested persons have the right to <i>provisional and ordinary</i> legal aid, <i>once a European arrest warrant has been issued</i> until they are surrendered, or, in cases of non-surrender, until the decision on surrender has become final. (AM. 42)
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, according to Article 10 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	[deleted]	2. The issuing Member State shall ensure that requested persons, that exercise their right to appoint a lawyer in the issuing Member State <i>and in any other Member State where evidence-gathering or other investigative acts are being carried out by the competent authorities</i> , according to Article 10 of Directive 2013/48/EU have the right to <i>provisional and ordinary</i> legal aid in that Member State for the purpose of the European arrest warrant proceedings in

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Member State.		the executing Member State. (AM. 42)
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 and/or whether it is in the interests of justice to provide legal aid, according to the applicable eligibility criteria in the Member State in question.	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.	<i>3. The assessment of the application for ordinary legal aid submitted by the requested person shall be based on the eligibility criteria as laid down in Article 4a, namely an assessment of the financial means of the requested person in Member States in which legal aid is subject to a means test and/or of whether it is in the interests of justice to provide legal aid in the case in question in Member States in which legal aid is subject to a merits test. (AM. 42)</i>
		<i>1. In order to ensure the effectiveness and quality of legal aid, Member States shall take the necessary action to guarantee that the legal aid services provided are of a sufficiently high standard to ensure that the right to a fair trial is safeguarded.</i>
		<i>2. Member States shall, in particular, ensure that: (a) ordinary legal aid is provided at all stages of the criminal justice process;</i>
		<i>(b) systems ensuring the quality and independence of legal aid lawyers are put in place or maintained, in particular a system of accreditation for legal aid lawyers as well as education and continuous professional training in order to ensure that these lawyers possess sufficient knowledge, skills and experience to contribute to the effective exercise of the rights of the defence;</i>
		<i>(c) continuity in legal representation if the suspect or</i>

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		<i>accused person and requested person so wish, is ensured;</i>
		<i>(d) suspect or accused person and requested person have the right to have the legal aid lawyer assigned to them replaced once;</i>
		<i>(e) adequate funding and resources are provided and budgetary autonomy is guaranteed for efficient functioning of the legal aid system;</i>
		<i>(f) appropriate training is provided to all staff involved in the decision-making on legal aid in criminal proceedings;</i>
		<i>(g) any decision rejecting in part or in full an application for legal aid is given to the suspect or accused person and the requested person in writing.</i>
		<i>1. Any person who applies for legal aid under this Directive shall have the right to appeal a decision refusing legal aid before an independent court, with a view to preserving the right to a fair trial and the right to defence.</i>
		<i>2. Member States shall ensure that suspects, accused persons and requested persons have an effective remedy if their rights under this Directive have been breached. Those remedies shall include the right to judicial review if access to legal aid has been undermined, delayed or refused in full or in part, or if those persons have not been adequately informed of their right to provisional and ordinary legal aid.</i>

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Provision of data	Provision of data	Provision of data
1. Member States shall collect data with regard to how the rights in Article 4 and Article 5 have been implemented.	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.	1. Member States shall collect <i>relevant statistical</i> data with regard to how the rights in <i>Articles 4, 4a, 4b, 5 and 5a</i> have been implemented, <i>whilst fully ensuring personal data protection for suspects or accused and requested persons.</i> (AM. 45)
2. Member States shall by [36 months after publication of this Directive] and every two years thereafter, send the Commission such data.		2. Member States shall by ... [*] and every <i>three</i> years thereafter, send the Commission such data.(AM.45) <i>* OJ: please insert date: two years after publication of this Directive.</i>
Non-regression clause	Non-regression clause	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.	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.	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.

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Transposition	Transposition	Transposition
1. Member States shall bring into force the laws, regulations and administrative provisions necessary to comply with this Directive by [18 months after publication of this Directive]. They shall immediately inform the Commission thereof.	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.	1. Member States shall bring into force the laws, regulations and administrative provisions necessary to comply with this Directive by [18 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.	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.	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.	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.	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.
Entry into force	Entry into force	Entry into force
This Directive shall enter into force on the twentieth day following that of its publication in the <i>Official Journal of the European Union</i> .	This Directive shall enter into force on the twentieth day following that of its publication in the <i>Official Journal of the European Union</i> .	This Directive shall enter into force on the twentieth day following that of its publication in the <i>Official Journal of the European Union</i> .
Addressees	Addressees	Addressees
This Directive is addressed to the Member States in accordance with the Treaties.	This Directive is addressed to the Member States in accordance with the Treaties.	This Directive is addressed to the Member States in accordance with the Treaties.