



EUROPEAN COMMISSION

Brussels, 8.8.2014
C(2014) 5852 final

Dear President,

The Commission would like to thank the Senát for its Opinion concerning the Commission's Proposals for a Directive on the strengthening of certain aspects of the presumption of innocence and of the right to be present at trial in criminal proceedings {COM (2013) 821 final}, for a Directive on procedural safeguards for children suspected or accused in criminal proceedings {COM (2013) 822 final} and for a Directive on provisional legal aid for suspects or accused persons deprived of liberty and legal aid in European arrest warrant proceedings {COM (2013) 824 final}. The proposed Directives are of major importance.

Presumption of innocence is still breached too often throughout the EU and there are points on which legal safeguards should be strengthened. The proposed Directive focuses on certain aspects of this fundamental principle flowing from the case-law of the European Court of Human Rights and where there is a need to set common minimum standards to ensure mutual trust between judicial authorities of the Member States of the European Union. It also addresses the right of the accused to be present at trial, an essential right of defence and part of the right to a fair trial, as interpreted by the European Court of Human Rights.

Existing EU laws on procedural safeguards in criminal proceedings apply to all suspects or accused persons, including children. However, they do not take sufficient account of the specific needs they may have, e.g., as regards understanding and following the proceedings, the increased risk of ill-treatment because of their vulnerability, the need to ensure that deprivation of liberty only takes place as a last resort. The proposed Directive guarantees and promotes the rights of the child, bearing in mind international guidelines and recommendations on child-friendly justice, and forms part of the EU Agenda for the Rights of the Child.

The right to legal aid is intrinsically linked to the right of access to a lawyer. For the right to access to a lawyer to be effective, and to further strengthen mutual trust in the European Union, legal aid needs to be available to those who most need it. The proposed Directive ensures provisional legal aid when a suspect or accused is deprived of liberty, guaranteeing legal aid in those cases where the person is particularly vulnerable and until the competent authority has made a final decision on the application for legal aid. Persons sought under a European arrest warrant also need to be given the right to provisional legal aid when deprived of liberty in the executing Member State, without having to wait for legal advice until the application for legal aid has been dealt with.

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The Commission appreciates that the Senát shares the Commission's concerns and the objectives of its above mentioned proposals. The system of mutual recognition of judgments and judicial decisions in the EU can only operate satisfactorily if Member States trust each other's criminal justice systems. However, the protection of the procedural rights of suspects and accused persons still varies significantly between the Member States, which gives rise to gaps to achieve the mutual trust needed. To fill those gaps the European Union must ensure that all Member States uphold a common minimum level of procedural rights, and that these rights can be enforced through EU law.

As regards the Senát's considerations with regard to the term "legal aid", Article 3 (and point 23 of the Explanatory Memorandum) of the proposed Directive, legal aid is defined as "funding and assistance from the Member State ensuring the effective use of the right of access to a lawyer". It should cover the costs of the defence, such as the cost of the lawyer, and other costs of the proceedings, such as court fees. This provision, and in particular the notion of costs of the proceedings, will be certainly subject to detailed discussions in the competent working group of the Council which will start under the Italian Presidency.

As regards the provisions on data collection, the Commission considers it important to monitor and evaluate the effectiveness and efficiency of the proposed directives. Similar provisions have been provided for by other Directives¹.

The points made above are based on the initial proposals presented by the Commission which is currently in the legislative process involving both the European Parliament and the Council at which your government is represented.

The Commission hopes that these comments address the issues raised by the Senát and looks forward to continuing our political dialogue in the future.

Yours faithfully,

*Martine Reicherts
Member of the Commission*

¹ See Art.28 of Directive 2012/29/EU establishing minimum standards on the rights, support and protection of victims of crime