

Courtesy Translation

TO
MR JOSÉ MANUEL BARROSO
PRESIDENT OF THE
EUROPEAN COMMISSION

Subject: Statement of the National Assembly of the Republic of Bulgaria on the Proposal for a Directive of the European Parliament and of the Council on the right of access to a lawyer in criminal proceedings and on the right to communicate upon arrest, COM(2011) 326

DEAR MR BARROSO,

At a regular sitting, held on November 2, 2011, the Committee on European Affairs and Oversight of the European Funds (CEAOEF) discussed the **Proposal for a Directive of the European Parliament and of the Council on the right of access to a lawyer in criminal proceedings and on the right to communicate upon arrest, COM(2011) 326, included as item 54** of the Annual Working Programme of the National Assembly on EU Affairs (2011).

The Bulgarian Parliament welcomes the proposal for a Directive which aims to set common minimum standards throughout the European Union, targeted at guaranteeing the rights of suspects and accused persons in criminal proceedings.

In the framework of the informal political dialogue, enclosed herewith please find the approved CEAOEF report, which contains statement with a **positive assessment of the subsidiarity principle**. Meanwhile, we would like to **express some concerns regarding the principle of proportionality** in relation to **the national procedural rules for admissibility of evidence**, established in each Member State. The CEAOEF Report incorporates the vision of the Legal Affairs Committee and reflects the Bulgarian Parliament's position on the issue.

Enclosure: as per text.

Looking forward to our fruitful cooperation in future.

Yours sincerely,

**PRESIDENT
OF THE NATIONAL ASSEMBLY**

TSETSKA TSACHEVA



**NATIONAL ASSEMBLY
OF THE REPUBLIC OF BULGARIA**

STATEMENT

**OF THE COMMITTEE ON EUROPEAN AFFAIRS AND OVERSIGHT OF THE EUROPEAN FUNDS
TO THE NATIONAL ASSEMBLY OF THE REPUBLIC OF BULGARIA**

After the discussion on the Proposal for a Directive of the European Parliament and of the Council on the right of access to a lawyer in criminal proceedings and on the right to communicate upon arrest COM(2011) 326 final, the Committee on European Affairs and Oversight of the European Funds (CEAOEF), expresses the following statement, which is to be sent to the European institutions in the framework of the political dialogue:

1. CEAOEF welcomes the proposal for a Directive which aims to set common minimum standards throughout the European Union, targeted at guaranteeing the right of suspects and accused persons in criminal proceedings.

CEAOEF points out, that the determination of common minimum European standards is a **guarantor for observing the fundamental human rights such as the right to a fair trial and the right of defence.**

Regarding the right of defence of the accused persons and the defendants, CEAOEF notices with satisfaction that the national legislation and case-law in the past years are **fully aligned** with the European Court of Human Rights practice, as well as with the international acts in this area to which Bulgaria is a party.

In addition, CEAOEF deems that the existence of a minimum set of common standards in criminal proceedings **will encourage mutual trust between the criminal justice systems of all Member States.** That shall consequently lead to judicial cooperation improvement and further strengthening of the mutual recognition of judgments and judicial decisions. Thus the protection of individual rights between the EU Member States will be further facilitated.

The abovementioned observations are in support of the Council of Minister's position, according to which the Republic of Bulgaria shows solidarity with the efforts for establishing common European standards. Such standards have the potential to boost mutual trust between the Member States regarding the accused persons' rights in criminal proceedings.

2. The proposal for a Directive **is in compliance with the principle of subsidiarity**, established in article 5, paragraph 3 of the Treaty on European Union (TEU), because the objectives in the proposed directive can be better achieved at EU level.

The existing differences among the Member States legal systems concerning the right to a lawyer and the right to communicate upon arrest **justifies the need for a common EU legal framework.** A common framework at European level will contribute to **the harmonization of the national rules in this area.** Moreover it will cover the requirements, layed down in Art. 6 of the European Convention on Human Rights and further developed in the European Court of Human Rights case-law.

Taking into account the increasing cross-border dimension of crime in the EU, the objectives in the proposed Directive cannot be sufficiently achieved by the Member States but can rather be better achieved at EU level.

3. Regarding the **principle of proportionality**, established in article 5, paragraph 4 of the TEU, CEAOEF considers that certain provision of the proposal **raise doubts over its compliance with the principle of proportionality**, because it exceeds what is necessary to achieve the objectives of the Treaties.

Furthermore, CEAOEF finds it necessary **to consider Art. 10, par. 2 and Art. 13, par. 3 deletion, concerning the national procedural rules for admissibility of evidence**. Those rules contain formal requirements and determine the criteria, which the judicial authority uses when accepting case evidence.

Therefore, CEAOEF considers that the **directive focus should be kept on the scope, origin and content of the right of defence**, without dealing with side-issues, i.e. the procedural rules for evidence admissibility in cases when a witness, during questioning or a hearing, is suspected of a criminal offence without giving him access to a lawyer.

4. Aimed at achieving the necessary legal security level, CEAOEF fosters a thorough debate on the issues, related to **the scope and content of the right to a lawyer and his participation in different procedural acts, as well as the derogations from this right**.

In this regard, CEAOEF finds it important to keep the balance between the right of defence of the suspected and accused persons, on one hand and the smooth criminal proceedings implementation, on the other hand.