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Dear President,

On behalf of the European Commission, I would like to thank you for the Opinion of the Italian Senate on the Commission proposal for a Directive on the right of access to a lawyer and on the right to communicate upon arrest {COM (2011) 326 final}.

The Commission welcomes the support expressed by the Italian Senate for its proposal. As concerns the specific remarks made on the text of the proposal, the Commission would like to provide the following clarifications.

First, as the Senate points out, the proposal applies to all criminal proceedings irrespective of their cross-border dimension. This is indispensable to achieve the aim of strengthening mutual trust between judicial authorities and thereby improving the functioning of mutual recognition instruments across the EU. Besides, since the cross-border nature of any proceedings might become apparent only some time after the start of the proceedings, it would be practically impossible to apply different sets of rights to persons involved in such proceedings.

Second, as regards the opportunity to specify that suspects and accused persons should be provided with an ex officio lawyer whenever they have not appointed one of their choosing, the Commission considers that this may be left to national implementing provisions. In fact, since a directive is to be binding as to the results to be achieved, while leaving the choice of forms and methods to the Member States, the modalities through which effective and practical access to a lawyer should be provided may be regulated by domestic legislation.

Finally, the Senate suggests that a specific clause should be inserted in the text in order to clarify that the directive shall be without prejudice to domestic provisions that provide a higher level of protection of defendants' rights. The Commission considers that this principle follows expressly from Article 82 (2), third paragraph TFEU that provides that "Adoption of the minimum rules referred to in this paragraph shall not prevent Member States from maintaining or introducing a higher level of protection for individuals". This principle is reiterated in recital 28 of the Commission proposal.

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I hope that these clarifications address the comments raised in the opinion submitted by the Italian Senate and I look forward to continuing our constructive political dialogue in the future.

Yours faithfully,

*Maroš Šefčovič
Vice-President*