



EUROPEAN COMMISSION

*Brussels, 15.4.2014
C(2014) 2583 final*

*Mr Pietro GRASSO
President of the
Senato della Repubblica
Piazza Madama, 1
IT – 00186 ROMA*

Dear President,

The Commission would like to thank the Senato della Repubblica 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 would guarantee and promote 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 Child¹.

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

¹ Communication from the European Commission on "An EU Agenda for the Rights of the Child" of 15.2.2011 - COM(2011) 60 final

Union, legal aid needs to be available to those who most need it. The proposed Directive would ensure 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.

The Commission appreciates that the Senato della Repubblica 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.

The Commission expects these laws to be adopted swiftly by the European Parliament and Council.

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

Yours faithfully,

*Maroš Šefčovič
Vice-President*