



EUROPEAN COMMISSION

Brussels, 24. II. 2012
C/2012/1113 final

Dear President,

The European Commission has taken note of the Opinion of the Portuguese Parliament 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} and welcomes the broad support expressed as well as the various constructive comments made on the text of the proposal. Please accept our apologies for the undue delay in replying to your opinion.

The Commission would like to take this opportunity to make the following comments:

Regarding Article 8 of the proposal, the Commission wishes to clarify that this provision stipulates that derogations may not be based exclusively on the type or seriousness of the offence. This does not detract from Member States' ability to provide in their domestic legislation that derogations may be availed of for certain categories of crimes only, as long as the competent authority makes an individual ("case by case") assessment of each situation before authorising such a derogation. In other words, the effect of this provision is merely to exclude automatic derogation for whole categories of criminal offences.

In addition, according to Article 8, derogations must be justified by the compelling need to protect the life or physical integrity of one or more persons and must be proportionate to the aim pursued.

As concerns Article 13(2), the Commission would like to point out that such wording follows from settled case-law of the European Court of Human Rights. In this respect, paragraph 3 of the same provision lays down a prohibition to use evidence obtained in breach of the right of access to a lawyer.

The Commission considers that the suggestion made by the Portuguese Parliament, further to clarify the practical consequences of this provision, is useful and will take it into account in the course of the legislative process.

Yours faithfully,

*Maroš Šefčovič
Vice-President*

*Mrs. Maria da Assunção Esteves
Presidente da Assembleia
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