



EUROPEAN COMMISSION
IMPACT ASSESSMENT BOARD

Brussels, D(2011)

Opinion

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Title

Impact Assessment on the Proposal for a Directive of the European Parliament and of the Council on the access to a lawyer

(draft of 24 February 2011)

(A) Context

Since the 1999 adoption of the Tampere Conclusions, Member States have agreed that mutual recognition should be the cornerstone of judicial cooperation, that is, that judicial decisions taken in one Member State should be considered as equivalent to each other wherever that decision is taken, and so enforceable anywhere in the EU. However, insufficient levels of mutual trust between Member States' judicial authorities affect cooperation and are an obstacle to mutual recognition of judgments and judicial decisions in criminal matters. The Council's Stockholm Programme document calls for a thorough examination of minimum procedural rights for accused and suspected persons, and the annexed Roadmap on Procedural Rights invites the Commission to submit proposals on a number of measures including on access to a lawyer. Following consultation, this current initiative has been separated from a related planned measure on access to legal aid.

(B) Overall assessment

While the report clearly presents the arguments with regard to options to improve access to a lawyer for accused and suspected persons, some aspects should be improved. Firstly, the report should explain which elements of option 4 reflect actual practice in some Member States, and whether option 3 can realistically be implemented in the foreseen timeframe. Secondly, the report should better illustrate the costs for Member States of complying with the recent ECtHR jurisprudence under the baseline option as well as the expected additional costs associated with the policy change options. Thirdly, it should better present the diversity in legal systems and indicate more clearly which Member States would need to substantially alter their practices. Finally, the report should provide clear references to received stakeholder input throughout the main text of the report.

(C) Main recommendations for improvement

(1) Improve the presentation of the analysis of options. The report should better explain that option 4 ('rules going beyond the ECtHR acquis'), although costly, has been considered as a relevant alternative because its constituent elements reflect current

practice in at least one Member State. The report should provide a clearer argument to show that option 3 can be realistically implemented. The report should clarify differences between options regarding the status of obligations on Member States and concerning the timeframe in which changes to national legal systems would be likely to happen. It should also better explain why the option of limiting the intervention to cases with a cross-border character is not feasible.

(2) Better illustrate the costs for Member States. The report should present an overview of the necessary steps to be taken by each Member State to be in compliance with ECtHR jurisprudence on the right of access to lawyer. It should clarify the added costs of options by including costs that are considered inevitable but not yet expended by Member States to comply with ECtHR case-law in the (baseline) option 1. The report should further illustrate the expected costs for administrations of the policy change options by providing reasonable cost estimates based on extrapolations for a representative set of Member States, while adding appropriate caveats on the limitations of such an approach. A table on legal aid budgets and caseloads should be added to put country-specific data into context and illustrate the reliability of generalised EU-wide estimates.

(3) Better present the diversity in legal systems. The report should present the available evidence on the status quo in Member States in a clearer way. It should clarify the role of the parameters (pp. 12-13) in the analysis and provide an overview of where exactly the Member States stand on all these aspects. In this context the readability of the table in Annex III should also be improved. The report should further explain why the formulation of minimum standards does not require harmonised definitions of concepts such as "suspects and accused persons" and "criminal proceedings", and why such harmonisation would be practically impossible. It should also indicate more clearly which Member States would need to substantially alter their practices.

(4) Better integrate the results of stakeholder consultation. The report should more clearly present stakeholder views on the different options throughout the main text, particularly the views of those with reservations about this proposal or those who have expressed opposition.

Some more technical comments have been transmitted directly to the author DG and are expected to be incorporated in the final version of the impact assessment report.

(D) Procedure and presentation

All procedural requirements appear to have been met. The comparison table and the explanatory text in §6 should be made consistent. The problem definition could be shortened by avoiding unnecessary repetition. A section on monitoring and evaluation should be added in the executive summary.

(E) IAB scrutiny process

Reference number	2011/JUST/002 (CWP2011/Annex 2)
External expertise used	No
Date of Board Meeting	23 March 2011