

(C) Main recommendations for improvements

(1) Clarify the problems. The report should better explain the policy context for this initiative, explaining what the links are between the related measures to strengthen the procedural rights in criminal proceedings, how each of them contributes to addressing the identified general problems and specifying where this initiative fits in that context. The report should further demonstrate the extent of the fundamental rights problems faced by suspected and accused persons requiring legal aid, by presenting in a clearer manner (e.g. using data from section 2 of the external impact study) the extent of differences between Member States' legal aid procedures. The report should explain why some Member States are falling short of the requirements of the European Convention on Human Rights (ECHR) in relation to legal aid. Given that there is limited evidence to support the existence of a mutual trust problem across Member States, the report should provide a deeper analysis of the extent to which an EU initiative on legal aid could be expected to add value e.g. by clearly identifying and addressing the gaps in the current standards.

(2) Strengthen the subsidiarity analysis. Given the sensitivity of imposing requirements on Member States' legal systems, the report should more clearly describe what are the fundamental rights problems not being sufficiently addressed at Member State or ECHR level that require EU action. It should identify which Member States do not have legal aid frameworks in place to ensure the correct implementation of the Directive on Access to Lawyer, so that it is clear where Member States fall below the necessary requirements and EU action is required to ensure minimum rights standards. It should include a more in depth analysis of the ECHR that identifies where the existing minimum standards fall short of their objective to ensure sufficient access to legal aid. It should improve its analysis of the ECHR and the European Court of Human Rights (ECtHR) enforcement powers, so that it is clear what is enforceable or not enforceable, and whether these issues of enforcement could be better addressed at EU level.

(3) Better present options and assess impacts. The report should describe the concrete content of the policy options in further detail, differentiating between legislative and non-legislative measures, so that it is clear what exact impacts can be expected from each of the policy options. In particular, it should specify what aspects of options 3(a) and 3(b) would potentially be combined and what would be the expected impacts of a combined option. The report should also better assess the proportionality of costs distributed across Member States, particularly for those Member States facing significant financial constraints and where investing in legal aid improvements might not be seen as a priority. In these cases, for example, the report could consider designing a set of support mechanisms for Member States to assist them in introducing the necessary minimum standards, such as flexible transposition deadlines. The report should also strengthen its cost benefit analysis so that it is clear what are the final expected costs for Member States once cost saving measures, such as reductions in pre-trial detention and merit-test refunds, have been taken into account.

(4) Better integrate Member States opinions. The views of Member States should be better presented throughout the report, as it is not clear what proportion of Member States are in support or against this initiative. In doing so, the report should explain the critical views of Member States, especially those that are expected to be particularly burdened by implementation costs and those that oppose legally-binding action in this area. Furthermore, the report should analyse the reasons underlying Member States' reluctance to introduce existing legal aid minimum standards, as it is not clear why a number of Member States

have not already introduced these basic standards.

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

Monitoring and evaluation criteria should specify what exactly this initiative aims to achieve and how exactly this will be measured in the proposed 3-5 year evaluation study. It should describe concrete performance indicators to measure the effectiveness and efficiency of this initiative, such as the extent to which eligibility criteria is expected to widen in Member States. It should include more concrete data collection requests for Member States especially concerning issues where data is lacking, such as the number of criminal cases and the cost of emergency legal aid. The report should further describe how compliance will be promoted in Member States given that poor enforcement partially explains why the ECHR has not been effective despite being legally binding.

(E) IAB scrutiny process

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External expertise used	No
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