



**COUNCIL OF  
THE EUROPEAN UNION**

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**NOTE**

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From :	Dutch delegation
To :	Working Party on Cooperation in Criminal Matters
Subject :	Access to a lawyer in the European arrest warrant proceedings – Discussion on Article 11.2 of 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

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The delegation of The Netherlands is grateful that experts on the EAW will get an opportunity to contribute to the discussion on the Proposal for the Directive on access to a lawyer, where the FD EAW applies.

In view of the upcoming discussion The Netherlands would like to draw the attention to the following points:

1. The FD EAW provides in Article 11 for the assistance of a lawyer. The discussion in relation to the Directive should focus on the question whether it is necessary that this right requires further clarification via the directive. We should not forget that the repeated evaluations of the application of the EAW did not bring to light problems in this area.
2. As the Presidency indicated about discussions in the Working Party, we should also be very clear in our minds and our approach that the surrender procedure is not comparable to criminal proceedings against suspects or an accused and thus the role of the lawyer is different.

3. The discussion should start with the question whether the present reading of Article 2 (Scope), paragraph 2, of the proposed directive is appropriate. This paragraph reads: “ 2. The Directive applies to persons subject to EAW proceedings from the time they are arrested in the executing State.”
4. The Netherlands is of the opinion that:
  - a. not the whole directive, but one article in the Directive should be applicable to and provide in a comprehensive matter for persons subject to the surrender proceedings;
  - b. the specific, comprehensive article should limit itself to the person subject to the surrender proceeding in the executing State;
  - c. when defining the obligations of the executing State we should take into account that the knowledge of the executing authorities is generally limited to the content of the EAW, they do not have an inside knowledge of the proceedings in the issuing State.
5. The Netherlands would be against an approach that a person subject to a surrender procedure after his arrest would have simultaneous access to a lawyer in the executing as well as in the issuing State.
6. With regard to the proposed text for paragraph 2 of Article 11 we will give our opinion in the meeting. However, with regard to of the fourth indent, we will not be in favour of this text which is in line with what has been said about this issue in the working party on the Directive. In the Netherlands a lawyer will have access to a detained person in the police station or prison in rooms that are made available to that purpose. A defence lawyer will neither have access “to the place where he is detained” (the holding facility of prison cell) nor is a lawyer considered to be the appropriate person to check conditions of detention. He may complain about it on behalf of his client but he is not to hold inspections, etc.

Finally, the Dutch delegation expects that given the agenda of the meeting, the outcome of this meeting will not be conclusive. It would be good that after a first round of discussion, the EAW experts will be given opportunity to complete their discussion. The Working Party on the Directive may well focus on other outstanding issues first before returning to this issue. Thus it will not hamper the work on the Directive.