



**COUNCIL OF
THE EUROPEAN UNION**

Brussels, 17 November 2011

17130/11

**Interinstitutional File:
2011/0154 (COD)**

**CATS 117
DROIPEN 140
COPEN 329
CODEC 2090**

NOTE

from : Presidency
to : CATS

No. Prop. : 11497/11 DROIPEN 61 COPEN 152 CODEC 1018
No. Prev. doc. : 16130/11 DROIPEN 128 COPEN 293 CODEC 1830

Subject : 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
- Discussion in view of the opinion by the Secretariat of the Council of Europe

1. On request of the LIBE Secretariat of the European Parliament, the Secretariat of the Council of Europe (CoE) has provided an opinion on the proposed Directive. This opinion, in which the CoE Secretariat provides replies to questions formulated by the LIBE Secretariat, is set out in doc. 16633/11. In the opinion, the CoE Secretariat points out that the opinion may evolve as the discussion on the Directive proceeds.
2. The Presidency considers that the opinion sheds an interesting light on certain provisions of the draft Directive that have been (extensively) discussed in the Council and its preparatory bodies, including CATS. Reference is inter alia made to the comments concerning the scope of the Directive, concerning the participation of a lawyer in evidence-gathering acts, and concerning derogations in general and to the principle of confidentiality in particular.

3. The Presidency would like to discuss the opinion of the CoE Secretariat with Member States, and hear from them whether in the light of this opinion it would be advisable to revisit certain provisions of this draft Directive.
 4. With a view to making the debate as fruitful as possible, the Presidency has invited a representative of the CoE secretariat to attend the CATS meeting on 25 November 2011 so as to be able to respond to any questions of Member States.
 5. In case Member States know already now of questions in respect of the opinion which they would like to put to the CoE secretariat, they are kindly requested to inform the Presidency and the Council General Secretariat thereof (by sending an e-mail to ostropolski@ms.gov.pl and to steven.cras@consilium.europa.eu), preferably before close of business on Wednesday 23 November 2011. The questions will then be forwarded to the CoE secretariat, so as to allow its representative to better prepare himself in advance of the CATS-meeting.
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