

First Impressions

of the European Legal Aid systems

ECBA Conf. Talinn, 6 Oct. 2012

Tom van de Laar, Dian Brouwer

Relevance

- EU is working on Directive on Legal Aid
- ECBA wishes to engage in that process to achieve a Directive that ensures effective legal aid is provided to all citizens of the EU that require it
- Needed: information from the EU workflow

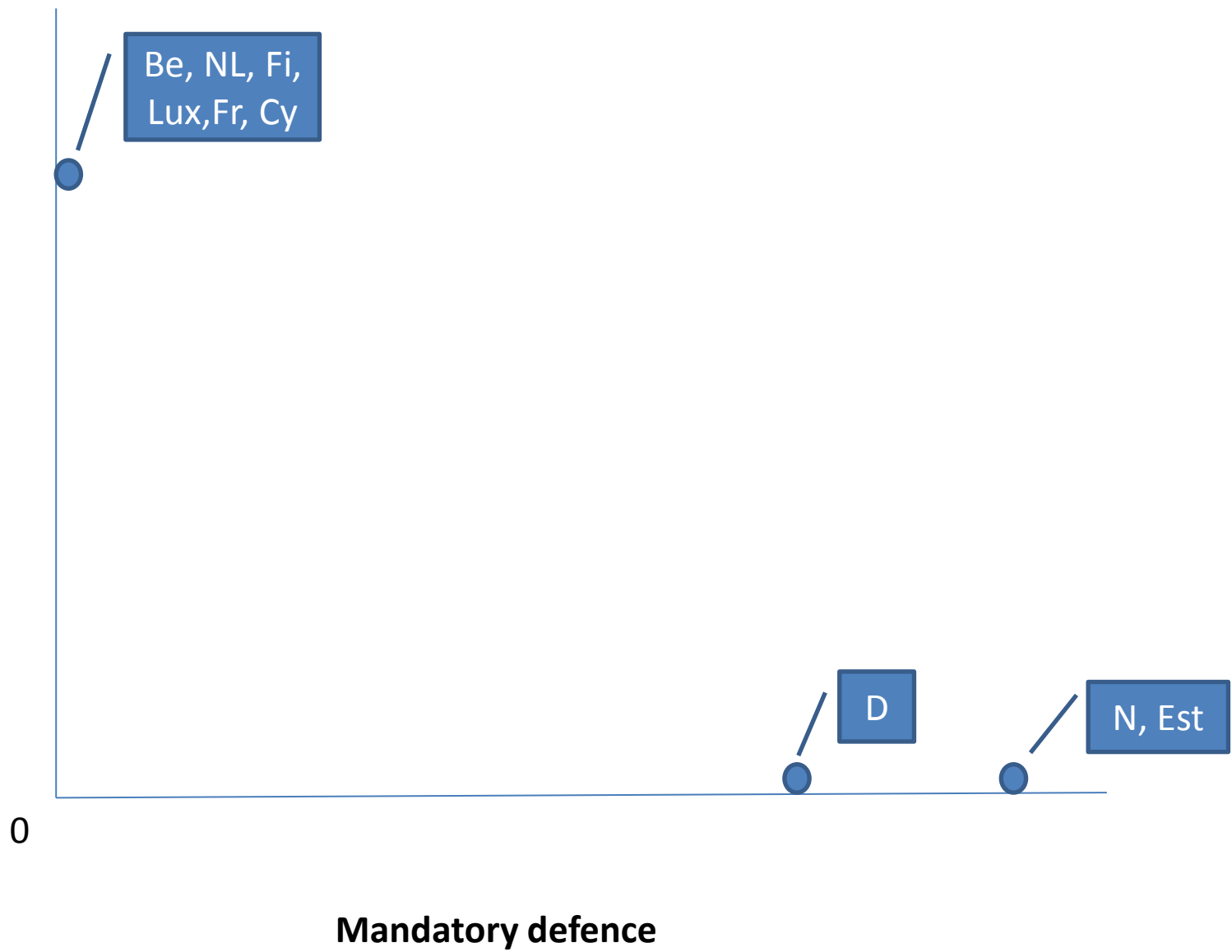
Methodology

- Extensive questionnaire
- 1 respondent per EU Memberstate (to get a feel...)
- No responses from Scotland, England & Wales, Italy

Two systems:

- Mandatory defence – e.g. Germany
 - Law requires a suspect/defendant to be assisted by a lawyer at trial
 - Variations: in all cases, in most cases, in the most serious cases or only in some cases.
- Financial legal aid – e.g. Belgium
 - Suspect/defendant who does not have the means to pay for a lawyer gets a government subsidy.
 - Variations: in all cases or in most cases

Financial legal aid

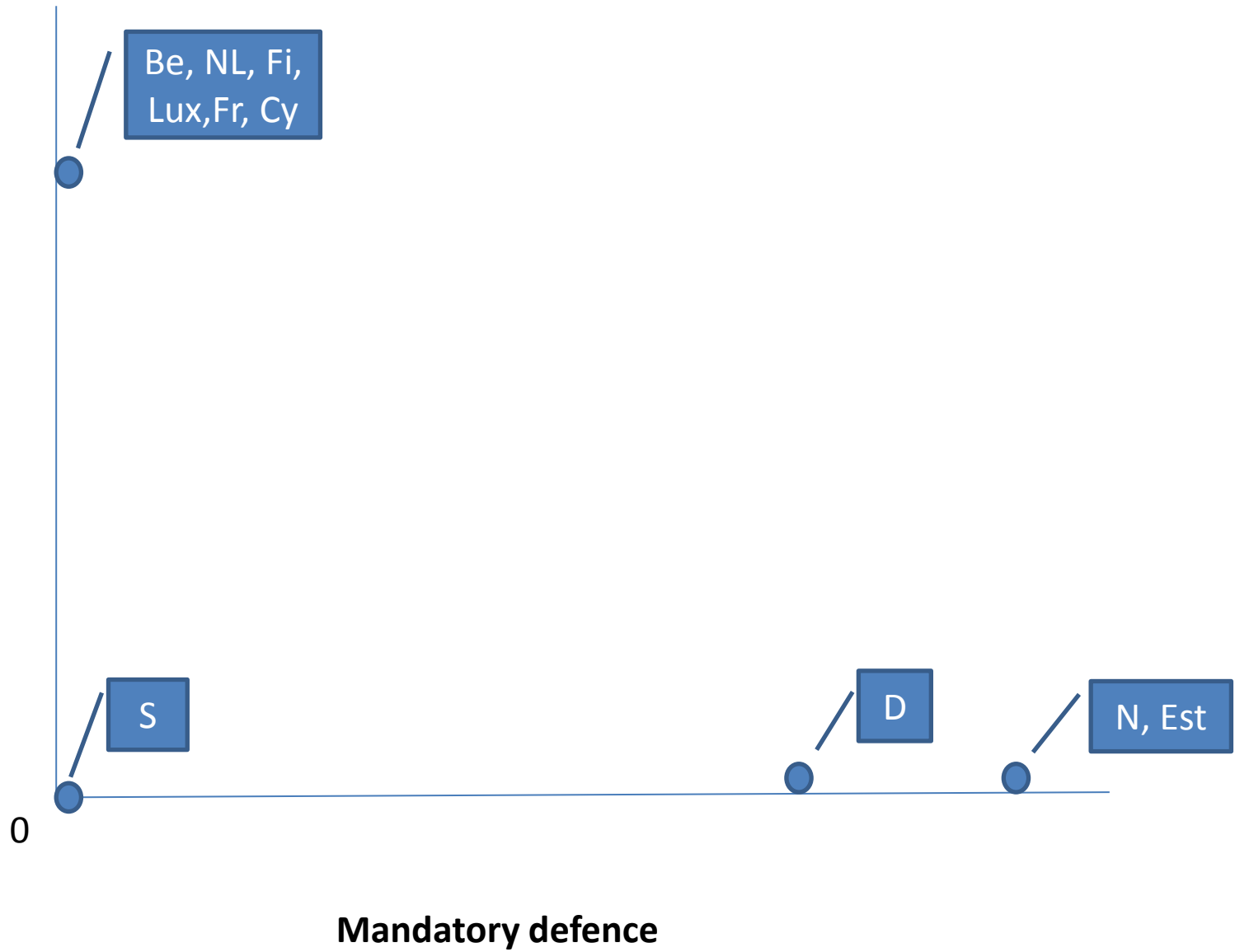


Note: Approximation on the basis of legally enforceable rights, as apparent from the filled out questionnaires

Complications

- Non-mandatory State provided defence
 - Pre-trial custody leads to the appointment of a State provided lawyer – e.g. The Netherlands
 - Suspect/defendant can refuse
 - So is this mandatory defence or is this legal aid? Or is this legal assistance in the interest of justice?
- Extra-legal State provided defence
 - Apparently no legal right exists, but “the courts always appoint a lawyer” - Sweden

Financial legal aid

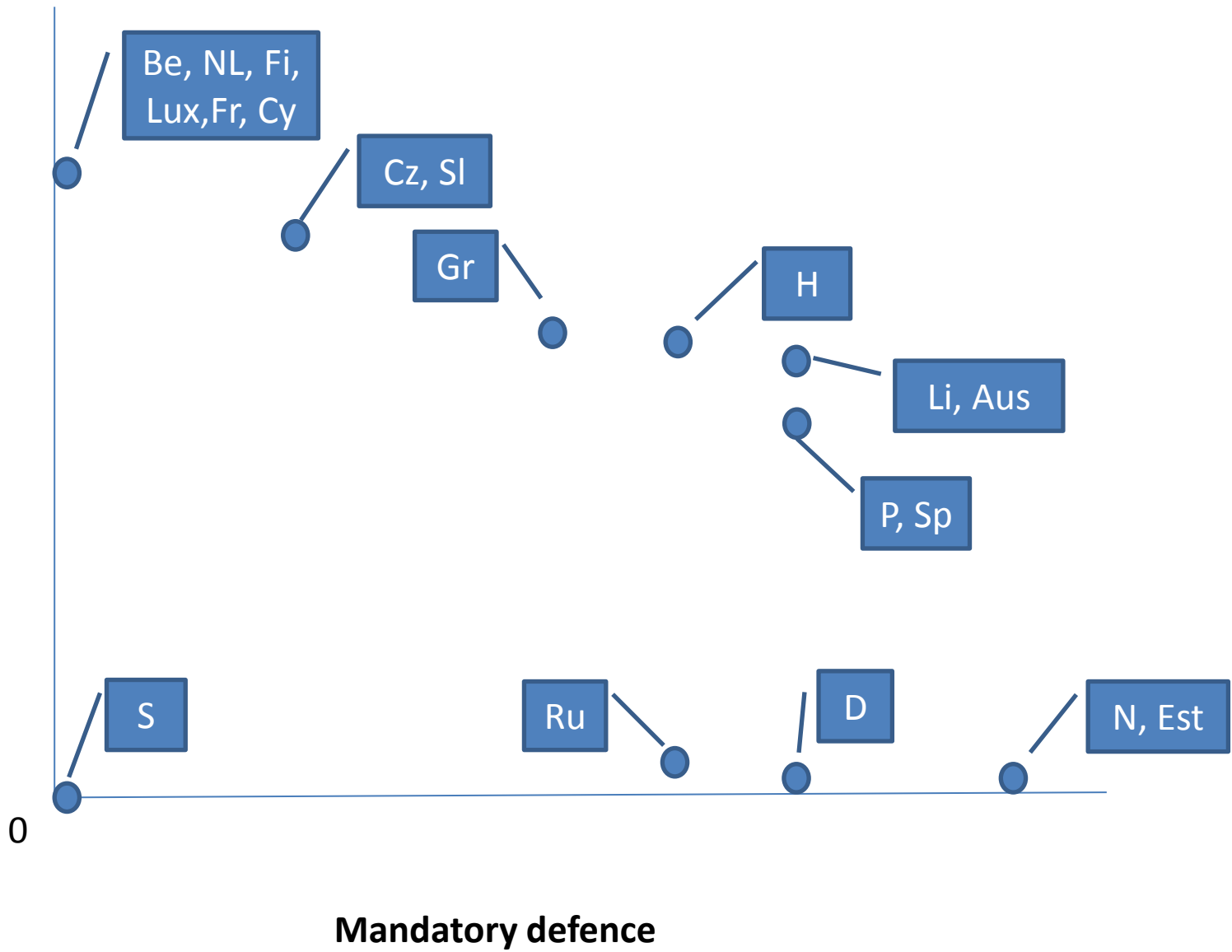


Note: Approximation on the basis of legally enforceable rights, as apparent from the filled out questionnaires

Combinations of systems

- Mandatory defence only in most serious cases, financial legal aid in less serious cases
- Mandatory defence with system to financially support defendants
- Mandatory defence with system to claw back costs from suspects/defendants able to pay

Financial legal aid



Note: Approximation on the basis of legally enforceable rights, as apparent from the filled out questionnaires

A simple question:

Suppose someone is arrested, who does not have a lawyer and does not have the financial means to pay for legal assistance. And suppose that person asks for consultation with a lawyer before the first police interview (“Salduz”).

In your system, is this person generally entitled to receive the free assistance of a lawyer?

Answers

“No”, there is no entitlement to receive the free assistance of a lawyer for “Salduz”-consultation of an arrested person:

Germany

Greece

Slovakia

Austria

Follow up questions, e.g.:

- Is that free legal aid for “Salduz”-consultation dependant on seriousness of the crime, financial means, etc.?

Yes, this is dependant on financial means:

France

Lithuania

Follow up questions, e.g.:

- Who contacts the lawyer, and can this authority influence the choice of the lawyer?
 - “Police or prosecutor”: Finland, Hungary, Rumania, Slovakia
 - “Yes, the choice of lawyer is/can be influenced by the authorities: Finland, Hungary, Rumania, Slovakia, Sweden, Germany

Follow up questions, e.g.:

- Does the suspect actually receive assistance within a reasonable time?

“not regularly” - Sweden

“mostly not” - Hungaria

“not always” - Finland

“it depends” - Slovakia

Lawyer's qualifications?

- General result: any lawyer qualified to practice can provide assistance in the early stages of a criminal investigation
- Special training required? Safeguards on quality? None.
 - Only exceptions: Belgium, The Netherlands
 - 2 special courses and (requirement of Dutch Legal Aid Board:) minimum annual number of criminal cases handled.

Remuneration

- Question:

“Imagine a straightforward case: possession of 1 kg cocaine. Pre-trial detention has been ordered. 3 court appearances. 4 witnesses heard/interviewed by the defence. You have provided assistance from the day of the arrest of your client. What would your remuneration (or reasonably expected range of remuneration) be?”

Answers

€ 3.000 – 5.000	-	Fin
€ 4.408	-	N
€ 3.000	-	Slov
€ 2.500	-	S
€ 2.150	-	NL
€ 1.239 - 1.887 + € 20 phone exp.	-	D
€ 500 - 1.500	-	F
€ 1.305	-	Lux
€ 500 - 1.000	-	B
€ 850	-	Lat
€ 688,50	-	P
€ 500	-	Est
€ 260	-	H
€ 50	-	Ru
“the legal minimum fee”	-	Gr
no answer	-	Aus

Next steps

- Broaden basis:
 - Get responses from missing countries;
 - Get multiple responses from each country
- Identify systematic weaknesses in individual countries as “touchstones” for the new Directive;
- Establish list of “key issues” the Directive must contain.

Your contribution:

- Your input is needed
- Please volunteer for filling out the questionnaire