

# Judicial cooperation in criminal matters: right to information in criminal proceedings

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The right to a written information upon arrest throughout the EU, as part of the protection of the right to a fair trial - that is what ministers discussed in a **public session** on the basis of a working document.

They welcomed the progress made in recent negotiations and asked the Council preparatory bodies to continue work on the outstanding issues.

These issues include:

- the exact way in which the suspected is informed about his rights,
- the distinction among different phases of criminal proceedings which would lead to a varying extent of the rights in each of these phases,
- the right to access the case file and the use of the term "case-file" unknown in some Member States;
- the question of costs.

The objective of the Presidency is to **reach a general approach** on this file at the Council in December 2010 so as to be able to start negotiations with the Parliament as soon as possible in the new year. One of the main difficulties is to take into account the various legal systems, especially the differences between civil law and common law countries.

Ireland and the United Kingdom decided to participate in the directive by using the opt-in option provided for in Protocol 21 of the Lisbon Treaty. Denmark is not taking part.

On a number of issues the Belgian Presidency is glad to note a **wide agreement among delegations**. While further work has to be done in the Working Party to refine the text of certain Articles, there is already a large support for the principles provided for by such Articles.

The following issues may be highlighted:

- **the principle enshrined in Article 3 of the Directive**, whereby the competent authorities should provide the suspected or accused person with basic information on fundamental procedural rights linked to the protection of the right to a fair trial, at least those listed in Article 3 (3) of the draft Directive. This information should be provided once these procedural rights may be exercised by the person concerned and in due time to allow him to effectively exercise them. **The information should in principle be provided only once during the proceedings**, it should not be reiterated unless otherwise required by the circumstances of the case or the specific rules laid down in national law;
- **the principle provided for by Article 4 of the Directive**, according to which a person who is placed under arrest or detention in the course of criminal proceedings should be provided in writing with a Letter of rights, containing basic information on his procedural rights immediately relevant to the situation of arrest or detention. **This right to written information also applies to detention imposed in relation to the execution of a European arrest warrant**;
- **the principle provided for by Articles 6 (3) and 7 (3)**, according to which, when the accused person is presented or summoned before a court to answer on the merits of a criminal charge, **he should be provided with detailed information about the offence he is accused of having committed and with generalized access to documents or materials which are in the possession**

**of the competent authorities** (save certain exceptions to necessary safeguard other relevant public interests), so that he may adequately prepare his defence.

On the other hand, there still are some key issues on which further reflection in the Council's preparatory bodies will be required. In particular, with relation to issues such as:

- the identification of the evidentiary materials and documents which should be the object of the right of access provided by Article 7, and the possibility to use in the text, as the original proposal does, the term "case-file" to designate the object of the right to access;
- the definition of a commonly acceptable timeframe situated before the trial phase of the criminal proceedings during which the rights referred to in Articles 6 and 7 should apply, at least to some extent.

The Belgian Presidency invites all delegations to continue participating actively in a common effort to find an adequate solution for these last outstanding issues and to proceed as rapidly as possible towards an agreement within the Council before the end of the year on a text of the Directive which could form the basis for further negotiations with the European Parliament.