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

2010/0215(COD) - 13/12/2011 - Text adopted by Parliament, 1st reading/single reading

The European Parliament adopted by 663 votes to 24, with 17 abstentions, a legislative resolution on the proposal for a directive of the European Parliament and of the Council on the right to information in criminal proceedings.

Parliament adopted its position at first reading under the ordinary legislative procedure. The amendments adopted in plenary are the result of an agreement negotiated between the European Parliament and the Council. They amend the Commission proposal as follows:

Objective: the amended text stipulates that the Directive lays down rules concerning the right to information of suspected or accused persons about rights in criminal proceedings and rights of persons in proceedings for the execution of a European arrest warrant and about the accusation in criminal proceedings.

Scope: where the law of a Member State provides for the imposition of a sanction regarding minor offences by an authority other than a court having jurisdiction in criminal matters, and the imposition of such a sanction may be appealed to such a court, this Directive shall apply only to the proceedings before that court following such an appeal.

The right to information about rights: any person who is suspected or accused of having committed a criminal offence is provided promptly with information concerning at least the following procedural rights as they apply under their national law, in order to allow for their effective exercise: (i) any entitlement to legal advice free of charge and the conditions for obtaining it; (ii) the right to be informed of the accusation; (iii) the right to remain silent. The information shall be provided either orally or in writing and in simple and accessible language, taking into account any particular need of vulnerable suspected or accused persons.

The right to written information about rights on arrest: Member States shall ensure that a person who is arrested or detained is provided promptly with a written Letter of Rights. The Letter of Rights shall contain information about the following rights as they apply under national law: (i) the right to access to the materials of the case; (ii) the right to have consular authorities and one person informed; (iii) the right of access to urgent medical assistance; (iii) for how many hours/days he may be deprived of liberty before being brought before a judicial authority.

The Letter of Rights shall also contain basic information about any possibility under national law to challenge the lawfulness of the arrest, to obtain a review of the detention, or to ask for provisional release.

An indicative model of the Letter of Rights is contained in Annex I of the Directive. The sole purpose of this model is to present an illustration of a Letter of Rights with a view to helping the national authorities when preparing such Letter at national level. Member States are not bound to use this model. When preparing their Letter, they may amend this model to align it with their national applicable rules and add further useful information.

The right to information about the accusation: a suspected or accused person should be provided with information about the criminal act he is suspected of having committed. This information shall be provided promptly and in such detail as is necessary to safeguard the fairness of the criminal proceedings and effectively exercise the person's right of defence.

Member States shall ensure that a person who is arrested or detained is informed of the reasons for his arrest or detention, including the criminal act he is suspected of having committed.

The right to access to the materials of the case: where a person is arrested and detained at any stage of the criminal proceedings, Member States shall ensure that documents related to the specific case in the possession of the competent authorities which are essential to effectively challenge according to national law the lawfulness of the arrest or detention, are made available to the arrested person or his lawyer.

Access to certain materials may be refused if it may lead to serious risk to the life or fundamental rights of another person or if it is strictly necessary to safeguard an important public interest, such as in the cases where it risks prejudicing an ongoing investigation, or where it may seriously harm the national security of the Member State in which the proceedings take place.

Training: Member States shall request those responsible for the training of judges, prosecutors, police and judicial staff involved in criminal proceedings to provide appropriate training with respect to the objectives of this Directive.

The Directive shall be transposed at the latest two years after its publication in the Official Journal. The Commission shall present at the latest three years after the publication of this Directive, a report assessing the extent to which the Member States have taken the necessary measures in order to comply with this Directive, accompanied, if necessary, by legislative proposals.