

# Judicial cooperation in criminal matters: right of access to a lawyer in criminal proceedings and in European arrest warrant proceedings, and right to communicate upon arrest

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The Council reached a **general approach** on a proposal for a directive on the right of access to a lawyer in criminal proceedings and on the right to communicate upon arrest.

Although some member states still have concerns regarding some points of the text, it was generally agreed that the time has come to start negotiations with the European Parliament in order to **agree on the final text of the directive**.

The general approach comes precisely one year after the Commission submitted its proposal on 8 June 2011. This relatively long period of deliberations can be explained by the sensitive subject matter of the file: the directive aims to **approximate the laws of the member states in a field where substantial differences between the national systems exist** and where the member states are not in agreement on the interpretation of the case-law of the European Court on Human Rights.

When the Commission presented its proposal, it met with criticism from the side of the member states. To address the concerns, the text of the proposal has been considerably redrafted. The current text tries to strike a balance between the positions of all member states. The most innovative element of the text is contained in Article 3(4), where a distinction is made as regards the efforts that have to be deployed by a member state in respect of the right of access to a lawyer. In all cases where the suspect or accused person is deprived of liberty, **member states should make the necessary arrangements to ensure that a suspect or accused person is in a position to effectively exercise his right of access to a lawyer**; in cases where a suspect or accused person is at large (not deprived of liberty), member states should not prevent a suspect or accused person from exercising his right of access to a lawyer.

The draft directive, in the version submitted to the Council, deals amongst other things with the following:

- the right of access to a lawyer for suspects and accused persons (when, under which conditions);
- the principle of confidentiality of communications between the lawyer and the suspect or accused person;
- the right of a suspect or accused person who is deprived of liberty to communicate with his country's consular or diplomatic authorities;
- the possibility of making temporary derogations to certain rights in exceptional circumstances and for compelling reasons only;
- the right of requested persons subject to a European Arrest Warrant to have access to a lawyer in the executing state.