

# 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 Committee on Civil Liberties, Justice and Home Affairs adopted the report by Elena Oana ANTONESCU (EPP, RO) on the 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.

The parliamentary committee recommends that the European Parliament's position adopted at first reading according to the ordinary legislative procedure should amend the Commission's proposal as follows:

**Objective and scope:** it is stipulated that the Directive lays down **minimum rules** concerning the rights of suspects and accused persons in criminal proceedings and of persons subject to European arrest warrant proceedings to have access to a lawyer and to have a third party informed of the deprivation of liberty.

Without prejudice to the right to a fair trial, in respect of minor offences, this Directive shall only apply to the proceedings before a court having **jurisdiction in criminal matters**. However, the Directive shall in any case fully apply when the suspect or accused person is deprived of liberty, **irrespective of the stage of the criminal proceedings**.

**Right of access to a lawyer in criminal proceedings:** the right to a lawyer should be broad and should be granted at an early stage of the proceedings without entailing the carrying over of the investigation. The amendments stipulate that the suspect or accused person shall have access to a lawyer without undue delay and, in any event:

- before he is questioned by the police or other law enforcement or judicial authorities;
- upon the carrying out by investigative or other competent authorities of an investigative or other evidence-gathering act (such as identity parades and reconstructions of the scene of crime);
- without undue delay from the deprivation of liberty;
- in due time before the suspect or accused person, who has been summoned to appear before a court having jurisdiction in criminal matters, appears before that court.

Moreover, the suspect or accused shall have the right: (i) to meet a lawyer and to communicate with him /her in complete **confidentiality**; (ii) to the presence of his/her lawyer and their effective participation in the person's questioning; (iii) to have effective access to a lawyer when he/she is deprived of liberty.

**Information of a third party:** suspects or accused persons deprived of their liberty should have the right to have at least one person of their choice, such as a **family member or employer**, informed of the deprivation of liberty without undue delay.

If the suspect or accused person is a **child**, Member States shall ensure that the holder of the parental responsibility of the child is informed as soon as possible of the deprivation of liberty and of the reasons pertaining thereto, unless it would be contrary to the best interests of the child.

If the person arrested is abroad, they will have the right to contact their **local consul** in the country in question.

**Procedure in regard to the European arrest warrant:** the amended text provides that a person requested for surrender in accordance with Council Framework Decision 2002/584/JHA has the right of access to a lawyer **in the executing Member State upon arrest** pursuant to the European Arrest Warrant.

**Derogations:** in certain exceptional circumstances and in the pre-trial stage only, Member States may **temporarily** derogate from the application of the Directive:

- when the geographical remoteness of a suspect or accused person makes it impossible to ensure the right of access to a lawyer without undue delay after deprivation of liberty ;
- when there is an urgent need to avert serious adverse consequences for the life, liberty or physical integrity of a person;
- when immediate action by the investigating authorities is imperative to prevent a substantial jeopardy to criminal proceedings.

**Remedies:** suspects or accused persons in criminal proceedings, as well as requested persons in European Arrest Warrant proceedings, should have an effective remedy under national law in instances where their rights under this Directive have been breached.