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 European Parliament adopted by 661 votes to 29 with 8 abstentions a legislative resolution 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.

Parliament adopted its position in first reading following the ordinary legislative procedure. The amendments adopted in plenary are the result of a compromise between Parliament and Council. They amend the proposal as follows:

Objective and scope: 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 apply to suspects or accused persons in criminal proceedings from the time when they are made aware by the competent authorities of a Member State, by official notification or otherwise, that they are suspected or accused of having committed a criminal offence, and irrespective of whether they are deprived of liberty. It applies until the conclusion of the proceedings, which is understood to mean the final determination of the question whether the suspect or accused person has committed the offence, including, where applicable, sentencing and the resolution of any appeal.

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 including before questioning**; (ii) to the presence of his/her lawyer and their effective participation in the person’s questioning.

Member States shall endeavour to make general information available to facilitate the obtaining of a lawyer by suspects or accused persons. They shall make the necessary arrangements to ensure that suspects or accused persons who are deprived of liberty are in a position to exercise effectively their right of access to a lawyer, unless they have waived that right.

Confidentiality: the text provides that Member States shall respect the confidentiality of communication between suspects or accused persons and their lawyer in the exercise of the right of access to a lawyer provided for under this Directive. Such communication shall include meetings, correspondence, telephone conversations and other forms of communication permitted under national law.

The right to have a third person informed of the deprivation of liberty: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.

An authority responsible for the protection or welfare of children must be informed without undue delay of the deprivation of liberty of the child.

Suspects or accused persons who are non-nationals and who are deprived of liberty have the right to have the consular authorities of their State of nationality informed without undue delay and to communicate with those authorities, if they so wish. They also have the right to be visited by their consular authorities, the right to converse and correspond with them and the right to have legal representation arranged for by their consular authorities.

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.

Lastly, the particular needs of vulnerable suspects and vulnerable accused persons must be taken into account in the application of the Directive.