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

2011/0154(COD) - 22/10/2013 - Final act

PURPOSE: to establish common minimum rules relating to the right of access to a lawyer in criminal proceedings and in European arrest warrant proceedings.

LEGISLATIVE ACT: Directive 2013/48/EU of the European Parliament and of the Council on the right of access to a lawyer in criminal proceedings and in European arrest warrant proceedings, and on the right to have a third party informed upon deprivation of liberty and to communicate with third persons and with consular authorities while deprived of liberty
CONTENT: the Directive lays down **minimum rules** concerning the rights of suspects and accused persons in criminal proceedings and of persons subject to proceedings pursuant to Framework Decision 2002/584/JHA, to have access to a lawyer, to have a third party informed of the deprivation of liberty and to communicate with third persons and with consular authorities while deprived of liberty
The directive is part of a Roadmap on procedural rights in criminal proceedings, which was approved by the Council in November 2009, and which provides a series of proposals to establish common minimum standards for the rights of accused persons and suspects in criminal proceedings.
The directive applies 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**.
In any event, the directive shall fully apply where the suspect or accused person is deprived of liberty, **irrespective of the stage of the criminal proceedings**.

The main elements of the directive are as follows:

The right of access to a lawyer in criminal proceedings: the directive provides that suspects or accused persons shall have access to a lawyer **without undue delay**:

- before they are questioned by the police or by another law enforcement or judicial authority;
- upon the carrying out by investigating or other competent authorities of an investigative or other evidence-gathering act (such the presentation of suspects or reconstructions of scenes of crime);
- from the moment of the deprivation of liberty;
- where they have been summoned to appear before a court having jurisdiction in criminal matters.

Confidentiality: the directive obliges the Member States to 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: the suspects or accused persons who are deprived of liberty, shall have the right, if they so wish, i) to have at least one person, such as a **relative or an employer**, nominated by them, informed of their deprivation of liberty without undue delay ; ii) to communicate without undue delay with at least one third person, such as a relative, nominated by them.

If the person is a child, the holder of parental responsibility of the child should be 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.

The right to communicate with consular authorities: if the suspected person is deprived of liberty abroad, they have the right to inform the consulate of their country. 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 them.

Derogations: the directive allows for the possibility to derogate temporarily from certain rights in exceptional circumstances and under certain strictly defined conditions, for example: i) in cases of geographical remoteness of the suspect or accused person, ii) when there is a need, in cases of urgency, to avert serious adverse consequences for the life, liberty or physical integrity of a person or iii) where immediate action by the investigating authorities is imperative to prevent substantial jeopardy to criminal proceedings.

European arrest mandate: the directive foresees the right, for a person subject to a European arrest warrant ("requested persons"), of access to a lawyer in the executing Member State and to appoint a lawyer in the issuing Member State

Member States shall ensure that the **particular needs of vulnerable accused persons** are taken into account in the application of the Directive.

ENTRY INTO FORCE: 26/11/2013.

TRANSPOSITION: 27/11/2016.