Legal aid for suspects and accused persons in criminal proceedings and for requested persons in European arrest warrant proceedings

2013/0409(COD) - 04/10/2016 - Text adopted by Parliament, 1st reading/single reading

The European Parliament adopted by 569 votes to 54 with 54 abstentions, a legislative resolution on the proposal for a directive of the European Parliament and of the Council on provisional legal aid for suspects or accused persons deprived of liberty and legal aid in European arrest warrant proceedings.

Parliament's position adopted in first reading following the ordinary legislative procedure, amended the Commission proposal as follows:

Purpose: Parliament stated that the Directive lays down common minimum rules concerning the right to legal aid for suspects and accused persons in criminal proceedings; and persons who are the subject of European arrest warrant proceedings. By doing so, the Directive aims to strengthen **the trust of Member States in each other's criminal justice systems** and thus to improve mutual recognition of decisions in criminal matters.

The Directive applies to suspects, accused persons and requested persons **regardless of their legal status, citizenship or nationality.**

Member States shall:

- respect and guarantee the rights set out in this Directive, **without any discrimination** based on any ground such as race, colour, sex, sexual orientation, language, religion, political or other opinion, nationality, ethnic or social origin, property, disability or birth;
- **uphold the fundamental rights** and principles recognised by the Charter of Fundamental Rights and by the European Convention on Human Rights.

Scope: the Directive applies to suspects and accused persons in criminal proceedings who have a right of access to a lawyer pursuant to Directive 2013/48/EU and who are:

- deprived of liberty;
- required to be assisted by a lawyer in accordance with Union or national law; or
- required or permitted to attend an investigative or evidence-gathering act, including as a minimum the following: (i) identity parades; (ii) confrontations; (iii) reconstructions of the scene of a crime.

The Directive also applies, under the same conditions, to **persons who were not initially suspects** or accused persons but become suspects or accused persons in the course of questioning by the police or by another law enforcement authority.

It also applies, **upon arrest** in the executing Member State, to requested persons who have a right of access to a lawyer pursuant to Directive 2013/48/EU.

Minor offences: where the law of a Member State provides for the imposition of a **sanction** regarding minor offences by such an authority and there is either a right of appeal or the possibility for the case to be otherwise referred to a court having jurisdiction in criminal matters, the Directive **applies only to the proceedings before that court following such an appeal or referral.**

Where the law of a Member State provides in respect of minor offences that deprivation of liberty cannot be imposed as a sanction, the Directive applies only to the proceedings before a court **having jurisdiction in criminal matters.**

Legal aid in criminal proceedings: suspects and accused persons who lack sufficient resources to pay for the assistance of a lawyer have the right to legal aid when the interests of justice so require. Member States may apply a means test, a merits test, **or both** to determine whether legal aid is to be granted.

In any event, the merits test shall be deemed to have been met in the following situations: (a) where a suspect or an accused person is brought before a competent court or judge in order to decide on detention at any stage of the proceedings within the scope of this Directive; and (b) during detention.

Decisions regarding the granting of legal aid: the competent authorities should grant legal aid **without undue delay** and at the latest before questioning of the person concerned by the police, by another law enforcement authority or by a judicial authority, or before the specific investigative or evidence-gathering acts referred to in the Directive are carried out. Suspects, accused persons, and requested persons **must be informed in writing** if their request for legal aid is refused in full or in part. They must have an effective remedy under national law in the event of a breach of their rights under the Directive.

Quality of legal aid services and training: Member States shall take necessary measures to ensure that legal aid services are of a **quality adequate** to safeguard the fairness of the proceedings, with due respect for the independence of the legal profession. The particular needs of **vulnerable suspects,** accused persons and requested persons must be taken into account.

Adequate **training** should be provided to staff involved in the decision-making on legal aid in criminal proceedings and in European arrest warrant proceedings.

Provision of data and report: by 54 months after the date of publication of the Directive, and every three years thereafter, Member States shall submit available data to the Commission showing how the rights laid down in the Directive have been implemented. By 66 months after the date of publication of the Directive, and every three years thereafter, the Commission shall submit a report on the implementation of the Directive.