Basic information

2010/0215(COD) COD - Ordinary legislative procedure (ex-codecision procedure) Directive	Procedure completed
Judicial cooperation in criminal matters: right to information in criminal proceedings **Subject** 1.10 Fundamental rights in the EU, Charter 7.40 Judicial cooperation 7.40.04 Judicial cooperation in criminal matters	

Key players

European Parliament

Committee responsible	Rapporteur	Appointed
LIBE Civil Liberties, Justice and Home Affairs	SIPPEL Birgit (S&D)	26/10/2010
	Shadow rapporteur ANTONESCU Elena Oana (PPE) LUDFORD Baroness Sarah (ALDE) KIRKHOPE Timothy (ECR) TRIANTAPHYLLIDES Kyriacos (GUE/NGL)	

Committee for opinion	Rapporteur for opinion	Appointed
JURI Legal Affairs	ALBRECHT Jan Philipp (Verts/ALE)	27/10/2010

Council of the European Union

Council configuration	Meetings	Date
Justice and Home Affairs (JHA)	3051	2010-12-02
Justice and Home Affairs (JHA)	3034	2010-10-07
Justice and Home Affairs (JHA)	3043	2010-11-08
Agriculture and Fisheries	3161	2012-04-26

European Commission

Commission DG	Commissioner
Justice and Consumers	REDING Viviane

Key events

Date	Event	Reference	Summary
20/07/2010	Legislative proposal published	COM(2010)0392	Summary
07/09/2010	Committee referral announced in Parliament, 1st reading		
07/10/2010	Debate in Council		Summary
08/11/2010	Debate in Council		Summary
02/12/2010	Debate in Council		Summary
23/11/2011	Vote in committee, 1st reading		
25/11/2011	Committee report tabled for plenary, 1st reading	A7-0408/2011	Summary
12/12/2011	Debate in Parliament		
13/12/2011	Decision by Parliament, 1st reading	T7-0551/2011	Summary
13/12/2011	Results of vote in Parliament		
26/04/2012	Act adopted by Council after Parliament's 1st reading		
22/05/2012	Final act signed		
22/05/2012	End of procedure in Parliament		
01/06/2012	Final act published in Official Journal		

Technical information

Procedure reference	2010/0215(COD)
Procedure type	COD - Ordinary legislative procedure (ex-codecision procedure)
Procedure subtype	Legislation
Legislative instrument	Directive
Legal basis	Treaty on the Functioning of the European Union TFEU 082-p2
Other legal basis	Rules of Procedure EP 165
Stage reached in procedure	Procedure completed
Committee dossier	LIBE/7/03510

Documentation gateway

European Parliament

Document type	Committee	Reference	Date	Summary
Amendments tabled in committee		PE454.671	13/12/2010	
Committee draft report		PE452.900	20/12/2010	
Committee opinion	JURI	PE452.710	27/01/2011	

Committee report tabled for plenary, 1st reading/single reading		A7-0408/2011	25/11/2011	Summary
Text adopted by Parliament, 1st reading/single reading		T7-0551/2011	13/12/2011	Summary

Council of the EU

Document type	Reference	Date	Summary
Draft final act	00078/2011/LEX	23/05/2012	

European Commission

Document type	Reference	Date	Summary
Legislative proposal	COM(2010)0392	20/07/2010	Summary
Document attached to the procedure	SEC(2010)0907	20/07/2010	
Document attached to the procedure	SEC(2010)0908	20/07/2010	
Commission response to text adopted in plenary	SP(2012)90	01/02/2012	
Follow-up document	COM(2018)0858	18/12/2018	Summary

National parliaments

Document type	Parliament /Chamber	Reference	Date	Summary
Contribution	ES_CONGRESS	COM(2010)0392	13/10/2010	
Contribution	PT_PARLIAMENT	COM(2010)0392	27/10/2010	
Contribution	IT_SENATE	COM(2010)0392	29/10/2010	

Additional information

Source	Document	Date
National parliaments	IPEX	
European Commission	EUR-Lex	

Final act

Directive 2012/0013
OJ L 142 01.06.2012, p. 0001 Summary

Judicial cooperation in criminal matters: right to information in criminal proceedings

2010/0215(COD) - 25/11/2011 - Committee report tabled for plenary, 1st reading/single reading

The Committee on Civil Liberties, Justice and Home Affairs adopted the report drafted by Birgit SIPPEL (S&D, DE) on the proposal for a directive of the European Parliament and of the Council on the right to information in criminal proceedings.

The committee recommends that the European Parliament's position adopted at first reading under the ordinary legislative procedure should be to amend the Commission proposal. The amendments proposed are the result of a discussion between the members of the committee responsible and Member States' representatives.

Objective: the amended text stipulates that the Directive lays down rules concerning the right to information of suspected or accused persons about rights in criminal proceedings and rights of persons in proceedings for the execution of a European arrest warrant and about the accusation in criminal proceedings.

Scope: where the law of a Member State provides for the imposition of a sanction regarding minor offences by an authority other than a court having jurisdiction in criminal matters, and the imposition of such a sanction may be appealed to such a court, this Directive shall apply only to the proceedings before that court following such an appeal.

The right to information about rights: any person who is suspected or accused of having committed a criminal offence is provided promptly with information concerning at least the following procedural rights as they apply under their national law, in order to allow for their effective exercise: (i) any entitlement to legal advice free of charge and the conditions for obtaining it; (ii) the right to be informed of the accusation; (iii) the right to remain silent. The information shall be provided either orally or in writing and in simple and accessible language, taking into account any particular need of vulnerable suspected or accused persons.

The right to written information about rights on arrest: Member States shall ensure that a person who is arrested or detained is provided promptly with a written Letter of Rights. The Letter of Rights shall contain information about the following rights as they apply under national law: (i) the right to access to the materials of the case; (ii) the right to have consular authorities and one person informed; (iii) the right of access to urgent medical assistance; (iii) for how many hours/days he may be deprived of liberty before being brought before a judicial authority.

The Letter of Rights shall also contain basic information about any possibility under national law to challenge the lawfulness of the arrest, to obtain a review of the detention, or to ask for provisional release.

The right to information about the accusation: a suspected or accused person should be provided with information about the criminal act he is suspected of having committed. This information shall be provided promptly and in such detail as is necessary to safeguard the fairness of the criminal proceedings and effectively exercise the person's right of defence.

Member States shall ensure that a person who is arrested or detained is informed of the reasons for his arrest or detention, including the criminal act he is suspected of having committed.

The right to access to the materials of the case: where a person is arrested and detained at any stage of the criminal proceedings, Member States shall ensure that documents related to the specific case in the possession of the competent authorities which are essential to effectively challenge according to national law the lawfulness of the arrest or detention, are made available to the arrested person or his lawyer.

Access to certain materials may be refused if it may lead to serious risk to the life or fundamental rights of another person or if it is strictly necessary to safeguard an important public interest, such as in the cases where it risks prejudicing an ongoing investigation, or where it may seriously harm the national security of the Member State in which the proceedings take place.

Training: Member States shall request those responsible for the training of judges, prosecutors, police and judicial staff involved in criminal proceedings to provide appropriate training with respect to the objectives of this Directive.

Judicial cooperation in criminal matters: right to information in criminal proceedings

2010/0215(COD) - 13/12/2011 - Text adopted by Parliament, 1st reading/single reading

The European Parliament adopted by 663 votes to 24, with 17 abstentions, a legislative resolution on the proposal for a directive of the European Parliament and of the Council on the right to information in criminal proceedings.

Parliament adopted its position at first reading under the ordinary legislative procedure. The amendments adopted in plenary are the result of an agreement negotiated between the European Parliament and the Council. They amend the Commission proposal as follows:

Objective: the amended text stipulates that the Directive lays down rules concerning the right to information of suspected or accused persons about rights in criminal proceedings and rights of persons in proceedings for the execution of a European arrest warrant and about the accusation in criminal proceedings.

Scope: where the law of a Member State provides for the imposition of a sanction regarding minor offences by an authority other than a court having jurisdiction in criminal matters, and the imposition of such a sanction may be appealed to such a court, this Directive shall apply only to the proceedings before that court following such an appeal.

The right to information about rights: any person who is suspected or accused of having committed a criminal offence is provided promptly with information concerning at least the following procedural rights as they apply under their national law, in order to allow for their effective exercise: (i) any entitlement to legal advice free of charge and the conditions for obtaining it; (ii) the right to be informed of the accusation; (iii) the right to remain silent. The information shall be provided either orally or in writing and in simple and accessible language, taking into account any particular need of vulnerable suspected or accused persons.

The right to written information about rights on arrest: Member States shall ensure that a person who is arrested or detained is provided promptly with a written Letter of Rights. The Letter of Rights shall contain information about the following rights as they apply under national law: (i) the right to access to the materials of the case; (ii) the right to have consular authorities and one person informed; (iii) the right of access to urgent medical assistance; (iii) for how many hours/days he may be deprived of liberty before being brought before a judicial authority.

The Letter of Rights shall also contain basic information about any possibility under national law to challenge the lawfulness of the arrest, to obtain a review of the detention, or to ask for provisional release.

An indicative model of the Letter of Rights is contained in Annex I of the Directive. The sole purpose of this model is to present an illustration of a Letter of Rights with a view to helping the national authorities when preparing such Letter at national level. Member States are not bound to use this model. When preparing their Letter, they may amend this model to align it with their national applicable rules and add further useful information.

The right to information about the accusation: a suspected or accused person should be provided with information about the criminal act he is suspected of having committed. This information shall be provided promptly and in such detail as is necessary to safeguard the fairness of the criminal proceedings and effectively exercise the person's right of defence.

Member States shall ensure that a person who is arrested or detained is informed of the reasons for his arrest or detention, including the criminal act he is suspected of having committed.

The right to access to the materials of the case: where a person is arrested and detained at any stage of the criminal proceedings, Member States shall ensure that documents related to the specific case in the possession of the competent authorities which are essential to effectively challenge according to national law the lawfulness of the arrest or detention, are made available to the arrested person or his lawyer.

Access to certain materials may be refused if it may lead to serious risk to the life or fundamental rights of another person or if it is strictly necessary to safeguard an important public interest, such as in the cases where it risks prejudicing an ongoing investigation, or where it may seriously harm the national security of the Member State in which the proceedings take place.

Training: Member States shall request those responsible for the training of judges, prosecutors, police and judicial staff involved in criminal proceedings to provide appropriate training with respect to the objectives of this Directive.

The Directive shall be transposed at the latest two years after its publication in the Official Journal. The Commission shall present at the latest three years after the publication of this Directive, a report assessing the extent to which the Member States have taken the necessary measures in order to comply with this Directive, accompanied, if necessary, by legislative proposals.

Judicial cooperation in criminal matters: right to information in criminal proceedings

2010/0215(COD) - 22/05/2012 - Final act

PURPOSE: to set common minimum standards as regards the right to information in criminal proceedings throughout the European Union.

LEGISLATIVE ACT: Directive 2012/13/EU of the European Parliament and of the Council on the right to information in criminal proceedings.

CONTENT: the Council adopted a directive on the right to information in criminal proceedings, following an agreement with the European Parliament at first reading.

This Directive lays down:

- rules concerning the right to information of **suspects or accused persons**, relating to their rights in criminal proceedings and to the accusation against them;
- rules concerning the right to information of persons subject to a European Arrest Warrant relating to their rights.

Right to information about rights: the text states that Member States shall ensure that suspects or accused persons are provided promptly with information concerning at least the following procedural rights, as they apply under national law, in order to allow for those rights to be exercised effectively:

- the right of access to a lawyer;
- any entitlement to free legal advice and the conditions for obtaining such advice;
- the right to be informed of the accusation, in accordance with Article 6;

- the right to interpretation and translation;
- the right to remain silent.

Member States shall ensure that the information shall be given orally or in writing, in simple and accessible language, taking into account any particular needs of vulnerable suspects or vulnerable accused persons.

Letter of rights on arrest: the Directive also stipulates that any person arrested has the right to receive upon arrest a so-called "Letter of Rights" in a language that he or she understands. It should be drafted in a simple and accessible language so as to be easily understood.

In addition to the rights already mentioned above, this "Letter of Rights" should contain information on at least the following procedural rights:

- the right to access to the materials of the case;
- the right to have consular authorities and one person informed;
- the right of access to urgent medical assistance;
- the right to know how long you can be deprived of liberty in the country concerned before being brought before a judicial authority after arrest.

The Letter of Rights shall also contain **basic information** about any possibility, under national law, of challenging the lawfulness of the arrest; obtaining a review of the detention; or making a request for provisional release.

Member States shall ensure that persons who are arrested for the purpose of the execution of a **European Arrest Warrant** are provided promptly with an appropriate Letter of Rights. An indicative model Letter of Rights is set out in Annex II.

Right to information about the accusation: Member States shall ensure that suspects or accused persons are provided with information about the criminal act they are suspected or accused of having committed. That information shall be provided promptly and in such detail as is necessary to safeguard the fairness of the proceedings and the effective exercise of the rights of the defence. Suspects or accused persons who are arrested or detained are informed of the reasons for their arrest or detention, including the criminal act they are suspected or accused of having committed.

Right of access to the materials of the case: Member States shall ensure that documents related to the specific case in the possession of the competent authorities which are essential to challenging effectively, in accordance with national law, the lawfulness of the arrest or detention, are made available to arrested persons or to their lawyers. Access to this information shall be provided free of charge.

Access to certain materials may be refused if such access may lead to a serious threat to the life or the fundamental rights of another person or if such refusal is strictly necessary to safeguard an important public interest, such as in cases where access could prejudice an ongoing investigation or seriously harm the national security of the Member State in which the criminal proceedings are instituted.

Training: without prejudice to judicial independence and differences in the organisation of the judiciary across the Union, Member States shall request those responsible for the training of judges, prosecutors, police and judicial staff involved in criminal proceedings to provide appropriate training with respect to the objectives of this Directive.

Report: the Commission shall, by 2 June 2015, submit a report to the European Parliament and to the Council, assessing the extent to which the Member States have taken the necessary measures in order to comply with this Directive, accompanied, if necessary, by legislative proposals.

ENTRY INTO FORCE: 21/06/2012.

TRANSPOSITION: 02/06/2014. The United Kingdom and Ireland shall participate in the adoption and the application of this Directive. Denmark is not taking part in the adoption of this Directive and is not bound by it or subject to its application.

Judicial cooperation in criminal matters: right to information in criminal proceedings

2010/0215(COD) - 02/12/2010

The Council reached a **general approach** on EU-wide minimum standards as regards the right to information in criminal proceedings. Now the negotiations with the European Parliament can begin.

The directive was proposed by the Commission in July 2010. Its goal is to ensure that any person suspected or accused of having committed a criminal offence is provided with information concerning some fundamental procedural rights, as well as information on the accusation against him, free of charge and in a language he or she understands.

The text on which the Council reached a general approach stipulates that any person arrested has the right to receive upon arrest a so-called "**Letter of Rights**" in a language that he or she understands. It should be drafted in a simple and accessible language so as to be easily understood by a lay person without any knowledge of criminal procedural law.

This "Letter of Rights" must contain information on a number of procedural rights:

- the right to know how long you can be deprived of liberty in the country concerned before
- being brought before a judicial authority after arrest;
- the right of access to a lawyer;

- any entitlement to legal advice free of charge and the conditions for obtaining it;
- the right to interpretation and translation;
- the right to remain silent.

The Commission proposal also provides for an indicative model of such a "Letter of Rights", in order to facilitate the elaboration by the Member States of a similar document adapted to their national law; the status and content of this indicative model will be discussed by Council at a later date.

Other information rights provided for in the current text of the directive include the right to access to the materials of the case. For this right, access to certain materials may be refused if it may lead to serious risk for the fundamental rights of another person. Access can also be refused if necessary to safeguard an important public interest, e.g. in cases where it risks jeopardizing an ongoing investigation, or where it may seriously harm the national security of the Member State in which the proceedings take place.

Judicial cooperation in criminal matters: right to information in criminal proceedings

2010/0215(COD) - 20/07/2010 - Legislative proposal

PURPOSE: to set common minimum standards as regards the right to information in criminal proceedings throughout the European Union.

PROPOSED ACT: Directive of the European Parliament and of the Council.

BACKGROUND: this proposal is the second step in a series of measures in the Procedural Rights Roadmap, adopted in Council on 30 November 2009 inviting the Commission to put forward proposals on a step by step basis. It should therefore be considered as part of a comprehensive package of legislation to be presented over the next few years which will provide a minimum set of procedural rights in criminal proceedings in the European Union. The first step, on the right to interpretation and translation, is a Directive adopted on 8 October 2010.

IMPACT ASSESSMENT: no impact assessment was carried out.

LEGAL BASE: Article 82(2) of the Treaty on the Functioning of the European Union (TFEU).

CONTENT: this proposal seeks to improve the rights of suspects. Having common minimum standards in relation to these rights should facilitate the application of the principle of mutual recognition, thereby improving the functioning of judicial cooperation between Member States of the EU. The main points are as follows:

Objective: the Directive lays down rules concerning the right of suspected and accused persons to information about their rights and about the charge in criminal proceedings against them.

Scope: the Directive applies from the time that a person is made aware by the competent authorities of a Member State, by official notification or otherwise, that he is suspected or accused of having committed a criminal offence until the conclusion of the proceedings (including any appeal). It does not, however, apply in proceedings conducted by administrative authorities in relation to the breach of competition legislation, whether national or European, unless the case is brought before a court having jurisdiction in criminal matters.

European Arrest Warrant proceedings are explicitly covered. In this respect, the Directive makes applicable the procedural guarantees contained in Articles 47 and 48 of the Charter and Articles 5 and 6 ECHR to surrender proceedings based on a European Arrest Warrant.

Right to information about rights: the proposal lays down the general principle that all suspected and accused persons in criminal proceedings should be informed about relevant procedural rights at the earliest possible moment in the proceedings. Such information should be given in simple and accessible language, orally or in writing. The proposal also sets out those minimum rights and Member States' obligations arising from the Charter, the ECHR, the ICCPR and applicable EU legislation, which are considered key to safeguarding the fairness of criminal proceedings at their outset.

Right to written information about rights on arrest: the draft directive specifies Member States' general duty to inform suspected or accused persons about their procedural rights in cases where such persons are deprived of their liberty by Member States' competent authorities in the course of the criminal proceedings on suspicion of having committed a criminal offence (e.g. through arrest by the police and being placed in pre-trial detention on the order of a judge). Member States are required to inform these persons of their relevant rights in writing. The European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT), has repeatedly stressed in its reports that, in its experience, the period immediately following deprivation of liberty is when the arrested person is considered to be most vulnerable in relation to risks of intimidation and physical ill-treatment. According to the CPT it is essential that a suspected or accused person is informed of his rights promptly, i.e. without delay after his arrest and in the most effective way which is by means of a form explaining the rights in a straightforward manner (Letter of Rights). In the light of recent European Court of Human Rights jurisprudence, Member States' competent authorities are required to ensure that the arrested person has a broad understanding of the information contained in the **Letter of Rights**. The arrested person must be allowed to keep the Letter of Rights throughout the time of his detention.

The **Letter of Rights** should be drafted in language which is easily understood by a lay person without any knowledge of criminal procedure and should contain the information referred to in the draft directive. To promote consistency in the written information throughout the EU, Annex I to the Directive contains a model of the Letter of Rights which Member States may use. This model is indicative and may be subject to review in the context of the report on implementation to be presented by the Commission and also once all the Roadmap measures have come into force. The content of the

model does not prejudice rights that currently apply in Member States. The Letter of Rights has to be provided to the suspected or accused person in a language he understands. Police authorities are expected to keep language versions for all commonly spoken languages in their locality available in electronic form that can be printed as the need arises. When a given language version is not available, the suspected or accused person should be informed of their rights orally in a language they understand and the Letter of Rights should be given to them without undue delay (i.e. as soon as it becomes available after translation into the relevant language). For persons who are partially sighted or blind, or who cannot read, Member States must have a method of transmitting the information.

The right to written information about rights in European Arrest Warrant proceedings: different rights apply to persons subject to a European Arrest Warrant (e.g. the right to a hearing). Member States should ensure that a specific version of the Letter of Rights exists for persons subject to those proceedings. Annex II to the Directive contains a model of the Letter of Rights which Member States may use. This model is indicative and may be subject to review. The content of the model does not prejudice rights that currently apply in Member States.

The right to information about the charge: once a person has been charged with a criminal offence, he should be given sufficient information promptly, in detail and in a language he understands, to enable him to prepare his defence, and to challenge pre-trial decisions if necessary. This is a requirement under the Charter and the ECHR. The text sets out exactly what information must be given as a minimum requirement.

The right to access to the case-file: the most effective way to provide a suspected or accused person with detailed information about the charge in order to allow him adequately to prepare his defence at trial is to give him or his lawyer access to the case-file. Recent research shows that in the large majority of Member States access to the case-file is already granted at some point in the criminal proceedings. The ECtHR has consistently ruled that, depending on the stage of criminal proceedings, Member States are required to disclose to the defence all material evidence for or against the accused and to provide the accused person's lawyer with access to relevant documents contained in the case-file.

The draft directive provides that where a suspected or accused person is arrested in the course of criminal proceedings, access to those documents contained in the case-file which are relevant to the determination of the lawfulness of the detention by the competent judicial authority should be granted. This limited access to the case-file ensures the fairness of pre-trial proceedings concerning the lawfulness of arrest and detention. In considering what documents and information access is being granted to, Member States should pay particular attention to the protection of the effectiveness of Leniency Programmes that are used in investigations under criminal law into cartel behaviour.

The text requires Member States to grant access to the case-file to all accused persons whether or not they are in custody, where the criminal investigation is concluded. Access to certain documents in the case-file may be excluded by a competent judicial authority where access to those documents may lead to serious risk to the life of another person or may seriously harm the internal security of the Member State in which the proceedings are taking place. Such limitation of access to the file is only to be used in exceptional circumstances. Access to the case-file should not be limited to a one-off inspection. If the accused person or his lawyer deems it necessary, further access should be granted. If a file is particularly voluminous or where the interests of justice so require it, the accused person should be provided with an index of the documents contained in the case-file to enable him to decide to which documents he wishes to be given access.

Verification and remedies: in order to ensure that a suspected or accused person receives all the information to which he is entitled, Member States should establish a procedure to ascertain whether the person has received the information. This can be a form for the person to sign confirming that he has received the information or a note in the custody record.

Training: Member States' police officers, prosecutors and judges should receive the necessary training to discharge adequately their duties arising from the directive. In particular, it is imperative that these officials have the requisite detailed knowledge of the procedural rights of suspected and accused persons in order to provide relevant and practically effective information on these rights.

Non-regression clause: the aim is to ensure that setting common minimum standards in accordance with the Directive does not have the effect of lowering standards in certain Member States and that the standards set in the ECHR are maintained. Member States remain entirely free to set standards higher than those agreed in the Directive.

Report: this must be submitted by the Commission 36 months after publication of the Directive.

Annex I: this Annex contains an indicative model of the Letter of Rights to be provided to a suspected or accused person on arrest. The model Letter of Rights sets out an explanation in simple language of the immediately relevant minimum rights as listed in the Directive. Whilst there is no obligation on Member States to use the model, those that do will be presumed to have implemented the relevant article 4 of the Directive.

Annex II: this Annex contains an indicative model of the Letter of Rights to be provided to a person arrested on the basis of a European Arrest Warrant. Whilst there is no obligation on Member States to use the model, those that do will be presumed to have implemented the relevant article of the Directive.

BUDGETARY IMPLICATIONS: this proposal has no implications for the EU budget.

Judicial cooperation in criminal matters: right to information in criminal proceedings

2010/0215(COD) - 07/10/2010

The Council welcomed the Commission proposal for EU-wide minimum standards as regards the right to information in criminal proceedings.

During the discussion, Ireland announced its wish to participate in the directive by using its opt-in option provided for in Protocol 21 of the Lisbon Treaty. The UK, which has the same option, has not yet decided to do so.

The discussion also showed that further work is necessary on a limited number of provisions, including the right to remain silent, access to the case file and the question of costs. The Council asked its preparatory bodies to continue their work on the dossier with a view to reaching a common position by the end of 2010.

Judicial cooperation in criminal matters: right to information in criminal proceedings

2010/0215(COD) - 08/11/2010

The right to a written information upon arrest throughout the EU, as part of the protection of the right to a fair trial - that is what ministers discussed in a **public session** on the basis of a working document.

They welcomed the progress made in recent negotiations and asked the Council preparatory bodies to continue work on the outstanding issues.

These issues include:

- the exact way in which the suspected is informed about his rights,
- the distinction among different phases of criminal proceedings which would lead to a varying extent of the rights in each of these phases,
- the right to access the case file and the use of the term "case-file" unknown in some Member States;
- the question of costs.

The objective of the Presidency is to **reach a general approach** on this file at the Council in December 2010 so as to be able to start negotiations with the Parliament as soon as possible in the new year. One of the main difficulties is to take into account the various legal systems, especially the differences between civil law and common law countries.

Ireland and the United Kingdom decided to participate in the directive by using the opt-in option provided for in Protocol 21 of the Lisbon Treaty. Denmark is not taking part.

On a number of issues the Belgian Presidency is glad to note a **wide agreement among delegations**. While further work has to be done in the Working Party to refine the text of certain Articles, there is already a large support for the principles provided for by such Articles.

The following issues may be highlighted:

- **the principle enshrined in Article 3 of the Directive**, whereby the competent authorities should provide the suspected or accused person with basic information on fundamental procedural rights linked to the protection of the right to a fair trial, at least those listed in Article 3 (3) of the draft Directive. This information should be provided once these procedural rights may be exercised by the person concerned and in due time to allow him to effectively exercise them. **The information should in principle be provided only once during the proceedings**, it should not be reiterated unless otherwise required by the circumstances of the case or the specific rules laid down in national law;
- **the principle provided for by Article 4 of the Directive**, according to which a person who is placed under arrest or detention in the course of criminal proceedings should be provided in writing with a Letter of rights, containing basic information on his procedural rights immediately relevant to the situation of arrest or detention. **This right to written information also applies to detention imposed in relation to the execution of a European arrest warrant**;
- **the principle provided for by Articles 6 (3) and 7 (3)**, according to which, when the accused person is presented or summoned before a court to answer on the merits of a criminal charge, **he should be provided with detailed information about the offence he is accused of having committed and with generalized access to documents or materials which are in the possession of the competent authorities** (save certain exceptions to necessary safeguard other relevant public interests), so that he may adequately prepare his defence.

On the other hand, there still are some key issues on which further reflection in the Council's preparatory bodies will be required. In particular, with relation to issues such as:

- the identification of the evidentiary materials and documents which should be the object of the right of access provided by Article 7, and the possibility to use in the text, as the original proposal does, the term "case-file" to designate the object of the right to access;
- the definition of a commonly acceptable timeframe situated before the trial phase of the criminal proceedings during which the rights referred to in Articles 6 and 7 should apply, at least to some extent.

The Belgian Presidency invites all delegations to continue participating actively in a common effort to find an adequate solution for these last outstanding issues and to proceed as rapidly as possible towards an agreement within the Council before the end of the year on a text of the Directive which could form the basis for further negotiations with the European Parliament.

Judicial cooperation in criminal matters: right to information in criminal proceedings

2010/0215(COD) - 18/12/2018 - Follow-up document

The Commission presents a report on the implementation of Directive 2012/13/EU on the right to information in criminal proceedings. It recalls that the Directive is the second instrument to be adopted pursuant to the Roadmap for strengthening procedural rights of suspected or accused persons in criminal proceedings, the first measure being Directive 2010/64/EU on the right to interpretation and translation in criminal proceedings.

Transposition

Member States had to transpose the Directive into national law by 2 June 2014. At the date of expiry of the transposition period, seven Member States had not communicated the necessary measures to the Commission: Cyprus, the Czech Republic, Luxembourg, Malta, Slovenia, Slovakia, and Spain. The Commission therefore decided in July 2014 to launch infringement proceedings under Article 258 of the Treaty on the Functioning of the European Union, against these seven Member States for failing to communicate their transposition measures.

Assessment

The Commission states that overall, the Directive has provided EU added value by improving the protection of citizens involved in criminal proceedings, especially in some Member States where the right to information (including the right of access to the file) did not previously exist or was not as detailed. The extent of the Directive's impact on Member States varies according to the national criminal justice systems in place.

The report highlights the following difficulties regarding certain provisions of the Directive in some Member States.

Letters of Rights on arrest

The Directive obliges Member States to promptly provide persons deprived of liberty with a Letter of Rights containing information about additional specific rights listed under the Directive. The Annex to the Directive sets out model letters for persons who have been arrested or detained, and persons arrested on the basis of a European arrest warrant.

The evaluation has shown difficulties in certain Member States relation to:

- information on the right of access to the materials of the case;
- information on the maximum number of hours or days suspects or the accused may be deprived of liberty before being brought before a judicial authority;
- basic information on challenging the arrest or detention and requesting a provisional release;
- the obligation to ensure that suspects or accused persons receive the Letter of Rights written in a language that they understand.

These provisions have either not been transposed correctly, or transposed at all.

Right to information about the accusation

The Directive lays down the obligation to inform suspects and accused persons about the accusation and changes to it. Disparities arise in several Member States with regard to the timing of the provision of the information on the accusation. In six Member States the merits of the case are first sent by the prosecution to the court and only afterwards to the accused person. In one Member State it is possible that the accused is notified of the charges only moments before brought before the court. In two Member States it is not clear if the decision is delivered to the accused person at the latest on submission of the merits of the accusation to a court. In one Member State detailed information on the accusation is provided at the latest on the substantive hearing of the case or matter by the court.

In a few Member States, issues arise with regard to the content of the information provided. For example, national legislation does not stipulate that the suspect or accused person must be informed in a detailed manner about the accusation, mention the nature and legal classification of the criminal offence, or specify the nature of participation by the accused. General uncertainties on the level of details provided in regard to the content of the decisions remain in some national legislation.

Right to access to materials of the case

The assessment of national implementing measures shows that the understanding of 'essential documents' as well as the overall scope of access differs in various Member States. Furthermore, some Member States allow for access to essential documents to be refused. Whilst established case law of the European Court of Human Rights permits secrecy regarding some case materials in order to prevent suspects from tampering with evidence, such denial of access cannot be pursued at the expense of substantial restrictions on the rights of defence. Other issues that arise in the context of this provision relate mainly to the timing of the access to essential documents.

The Commission also highlights problems with regard to access to all material evidence. Issues arise where the access to the case file is granted but the case file does not contain all material evidence. In some cases evidence that is kept outside the case file is not made accessible, or only at the trial stage.

Lastly, the report notes issues regarding the derogation from the right to access all material evidence following a judicial decision or decision subject to judicial review. The assessment of national implementing measures shows that this is one of the provisions with the highest level of disparities between Member States.

Revision

The Commission considers that there is currently no need to revise the Directive but that its application can be further improved in practice. The Commission will continue to assess Member States' compliance with the Directive and will take every appropriate measure to ensure conformity with its provisions throughout the European Union.