Basic information

2011/0154(COD) COD - Ordinary legislative procedure (ex-codecision procedure) Directive	Procedure completed
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 See also 2013/0409(COD) **Subject** 7.40.04 Judicial cooperation in criminal matters	

Key players

European Parliament

Committee responsible	Rapporteur	Appointed
LIBE Civil Liberties, Justice and Home Affairs	ANTONESCU Elena Oana (PPE)	12/07/2011
	Shadow rapporteur ROMERO LÓPEZ Carmen (S&D) LUDFORD Baroness Sarah (ALDE) ALBRECHT Jan Philipp (Verts/ALE) KIRKHOPE Timothy (ECR) DE JONG Dennis (GUE/NGL)	

Committee for opinion	Rapporteur for opinion	Appointed
JURI Legal Affairs	ALBRECHT Jan Philipp (Verts/ALE)	11/07/2011

Council of the European Union

Council configuration	Meetings	Date
Justice and Home Affairs (JHA)	3172	2012-06-08
Justice and Home Affairs (JHA)	3260	2013-10-07
Justice and Home Affairs (JHA)	3195	2012-10-25
Justice and Home Affairs (JHA)	3244	2013-06-06

European Commission	Commission DG	Commissioner
	Justice and Consumers	REDING Viviane

Key events

Date	Event	Reference	Summary
08/06/2011	Legislative proposal published	COM(2011)0326	Summary
05/07/2011	Committee referral announced in Parliament, 1st reading		
08/06/2012	Debate in Council		Summary
25/10/2012	Debate in Council		
06/06/2013	Debate in Council		
19/06/2013	Vote in committee, 1st reading		
24/06/2013	Committee report tabled for plenary, 1st reading	A7-0228/2013	Summary
09/09/2013	Debate in Parliament		
10/09/2013	Decision by Parliament, 1st reading	T7-0340/2013	Summary
10/09/2013	Results of vote in Parliament		
07/10/2013	Act adopted by Council after Parliament's 1st reading		
22/10/2013	Final act signed		
22/10/2013	End of procedure in Parliament		
06/11/2013	Final act published in Official Journal		

Technical information

Procedure reference	2011/0154(COD)
Procedure type	COD - Ordinary legislative procedure (ex-codecision procedure)
Procedure subtype	Legislation
Legislative instrument	Directive
Amendments and repeals	See also 2013/0409(COD)
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/7/06267

Documentation gateway

European Parliament

Document type	Committee	Reference	Date	Summary

Committee opinion	JURI	PE473.811	21/12/2011	
Committee draft report		PE474.063	07/02/2012	
Amendments tabled in committee		PE486.050	21/03/2012	
Committee report tabled for plenary, 1st reading/single reading		A7-0228/2013	24/06/2013	Summary
Text adopted by Parliament, 1st reading/single reading		T7-0340/2013	10/09/2013	Summary

Council of the EU

Document type	Reference	Date	Summary
Draft final act	00040/2013/LEX	23/10/2013	

European Commission

Document type	Reference	Date	Summary
Legislative proposal	COM(2011)0326	08/06/2011	Summary
Document attached to the procedure	SEC(2011)0686	08/06/2011	
Document attached to the procedure	SEC(2011)0687	08/06/2011	
Commission response to text adopted in plenary	SP(2013)774	06/12/2013	
Follow-up document	COM(2019)0560	27/09/2019	Summary

National parliaments

Document type	Parliament /Chamber	Reference	Date	Summary
Contribution	NL_SENATE	COM(2011)0326	14/10/2011	
Contribution	PT_PARLIAMENT	COM(2011)0326	14/10/2011	
Contribution	BG_PARLIAMENT	COM(2011)0326	24/11/2011	
Contribution	IT_SENATE	COM(2011)0326	13/04/2012	

Additional information

Source	Document	Date
National parliaments	IPEX	
European Commission	EUR-Lex	
European Commission	EUR-Lex	

Final act

Directive 2013/0048
OJ L 294 06.11.2013, p. 0001 Summary

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) - 24/06/2013 - Committee report tabled for plenary, 1st reading/single reading

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.

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) - 10/09/2013 - Text adopted by Parliament, 1st reading/single reading

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.

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.

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) - 08/06/2011 - Legislative proposal

PURPOSE: to set common minimum standards on the rights of suspects and accused persons in criminal proceedings throughout the EU to have access to a lawyer and to communicate upon arrest with a third person, such as a relative, employer or consular authority.

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

BACKGROUND: the **Charter of Fundamental Rights of the European Union** stipulates the right to a fair trial. The **right of access to a lawyer** is enshrined in Article 6 of the European Court of Human Rights (ECHR) and in Article 14(2) of the ICCPR. The right to communicate with a third party is one of the important safeguards against ill treatment prohibited by Article 3 ECHR and the right to have one's consulate informed of detention builds upon the 1963 Vienna Convention on Consular Relations.

The **European Court of Human Rights** has consistently held that the suspect or accused person should have access to a lawyer at the initial stages of police questioning, and in any event from the start of detention, to protect the right to a fair trial, and in particular the privilege against self-incrimination and to avoid ill treatment. Derogations from the right of access to a lawyer and the right to communicate upon arrest should be permitted only in exceptional circumstances.

The Council recognised that to date, not enough had been done at European level to safeguard the fundamental rights of individuals in criminal proceedings.

The proposal is the next step in the series of measures laid down in the Resolution of the Council of 30 November 2009 on a Roadmap for strengthening procedural rights of suspects and accused persons in criminal proceedings, appended to the Stockholm Programme approved by the European Council of 10-11 December 2010. The Roadmap invites the Commission to put forward proposals on a 'step-by-step' basis.

The proposal is the next step in the series of measures laid down in a Resolution of the Council of 30 November 2009 on a Roadmap for strengthening procedural rights of suspects and accused persons in criminal proceedings, appended to the Stockholm Programme approved by the European Council of 10-11 December 2010. The Roadmap invites the Commission to put forward proposals on a 'step-by-step' basis.

This proposal 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 issue of legal aid, which was conflated with that of access to a lawyer in the Roadmap, warrants a separate proposal owing to the specificity and complexity of the subject.

- the first step is Directive 2010/64/EU on the right to interpretation and translation;
- the second step will be a Directive, currently under negotiation on the basis of a Commission proposal, on the right to information, which will set out minimum rules on the right to receive information on one's rights, and on the charges, as well as on the right of access to the case file.

Having common minimum standards governing these rights should **boost mutual trust between judicial authorities** and thus facilitate the application of the principle of mutual recognition.

IMPACT ASSESSMENT: no impact assessment was carried out.

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

CONTENT: the objective of the Directive is to lay down rules governing the rights of suspected and accused persons and persons subject to an European Arrest warrant to have **access to a lawyer** in criminal proceedings against them, and rules governing the right of suspects and accused persons who are deprived of their liberty to **communicate upon arrest with a third party,** such as a relative, employer or consular authority.

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).

The main elements of this proposal are the following:

The right of access to a lawyer in criminal proceedings: the proposal lays down the general principle that all suspected and accused persons in criminal proceedings should have access to a lawyer as soon as possible, in time and in a manner that allows them to exercise their defence rights. Access to a lawyer must be granted at the latest upon deprivation of liberty, as soon as possible in the light of the circumstances of each case. Irrespective of any deprivation of liberty, access to a lawyer must be granted upon questioning.

Content of the right of access to a lawyer: the proposal sets out the activities that a lawyer representing an accused or suspected person must be entitled to carry out to ensure effective exercise of defence rights, including meeting with the suspect or accused person for an adequate duration and frequency to ensure the effective exercise of the rights of defence; attending any questioning or hearing.

The right to communicate upon arrest: the proposal provides for the right of persons deprived of their liberty in criminal proceedings to communicate as soon as possible upon arrest with one person nominated by them, which is most likely to be a relative or employer, so as to inform him of the detention. Legal representatives of children deprived of their liberty should be notified as soon as possible of the child's custody and the reasons pertaining thereto, unless it is against the best interests of the child. Where it is not possible to communicate with or notify the person designated by the detained person despite best endeavours to do so, the detained person is to be informed of the fact that the notification did not occur. Any consequences are left to national law.

The right to communicate with consular or diplomatic authorities: this provision confirms the right to communicate with consular authorities. It places a duty on Member States to ensure that all foreign detainees are able to have the consular authorities of their State of nationality informed of the detention if they so wish.

Confidentiality: defence rights are protected by the obligation to ensure that all communications, in whatever form they take, between a suspected and accused person and his lawyer are entirely confidential, with no scope for derogations.

Derogations: given the paramount importance of the rights enshrined in this Directive suggests that derogations for Member States should not be possible, in principle. Limited scope for derogations, however, is admitted by the ECtHR jurisprudence as concerns the initial stages of criminal proceedings. Member States may be allowed to derogate from the right of access to a lawyer only in exceptional circumstances, subject to necessity and to procedural safeguards. Any derogation must be justified by compelling reasons pertaining to the urgent need to avert danger for the life or physical integrity of one or more people.

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

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) - 08/06/2012

The Council reached a **general approach** on a proposal for a directive on the right of access to a lawyer in criminal proceedings and on the right to communicate upon arrest.

Although some member states still have concerns regarding some points of the text, it was generally agreed that the time has come to start negotiations with the European Parliament in order to **agree on the final text of the directive**.

The general approach comes precisely one year after the Commission submitted its proposal on 8 June 2011. This relatively long period of deliberations can be explained by the sensitive subject matter of the file: the directive aims to **approximate the laws of the member states in a field where substantial differences between the national systems exist** and where the member states are not in agreement on the interpretation of the case-law of the European Court on Human Rights.

When the Commission presented its proposal, it met with criticism from the side of the member states. To address the concerns, the text of the proposal has been considerably redrafted. The current text tries to strike a balance between the positions of all member states. The most innovative element of the text is contained in Article 3(4), where a distinction is made as regards the efforts that have to be deployed by a member state in respect of the right of access to a lawyer. In all cases where the suspect or accused person is deprived of liberty, **member states should make the necessary arrangements to ensure that a suspect or accused person is in a position to effectively exercise his right of access to a lawyer**; in cases where a suspect or accused person is at large (not deprived of liberty), member states should not prevent a suspect or accused person from exercising his right of access to a lawyer.

The draft directive, in the version submitted to the Council, deals amongst other things with the following:

- the right of access to a lawyer for suspects and accused persons (when, under which conditions);
- the principle of confidentiality of communications between the lawyer and the suspect or accused person;
- the right of a suspect or accused person who is deprived of liberty to communicate with his country's consular or diplomatic authorities;
- the possibility of making temporary derogations to certain rights in exceptional circumstances and for compelling reasons only;
- the right of requested persons subject to a European Arrest Warrant to have access to a lawyer in the executing state.

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) - 27/09/2019 - Follow-up document

The Commission presented a report on the implementation of Directive 2013/48/EU of the European Parliament and of the Council of 22 October 2013 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 person informed upon deprivation of liberty and to communicate with third persons and with consular authorities while deprived of liberty.

The Directive was adopted to ensure that the right of suspects or accused persons to access a lawyer and to communicate upon arrest is applied both in criminal proceedings and in European arrest warrant proceedings.

European added value

The Directive contributes to improving mutual trust among Member States, as set out in the Roadmap for strengthening the procedural rights of suspected or accused persons in criminal proceedings.

By establishing common European minimum standards, the Directive has a significant impact on the protection of suspects or accused persons in Member States. It achieves this by providing a more consistent implementation of the rights and guarantees set out in Articles 47 and 48 of the Charter of Fundamental Rights and Article 6 of the European Convention on Human Rights.

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 of access to a lawyer was not granted to all suspects and accused persons, especially at the early stages of proceedings. Also, a right of access to a lawyer in the issuing Member State of a European arrest warrant is now clearly established.

Persistent difficulties with key provisions of the Directive

Member States had to transpose the Directive into national law by 27 November 2016. At the date of expiry of the transposition period, nine Member States had not communicated the necessary measures to the Commission: Bulgaria, Cyprus, Germany, Greece, France, Croatia, Luxembourg, Slovenia and Slovakia. The Commission therefore decided in January 2017 to launch infringement proceedings against these nine Member States for failing to communicate their transposition measures. Meanwhile all Member States have notified full transposition. Infringement proceedings are still ongoing as not all provisions of the Directive have been transposed.

The extent of the Directive’s impact on Member States varies according to the national criminal justice systems in place. This implementation report highlights that there are still difficulties regarding key provisions of the Directive in a number of Member States. This is particularly the case as regards:

(1) The scope of the rights provided for in the Directive

In four Member States, rights under the Directive are made dependent on a formal act. This formal act is often also the necessary condition for acquiring the status of a suspect or prosecuted person. In a limited number of Member States, the legislation is not clear as regards persons who are not deprived of their liberty.

(2) The extent of possible derogations, in particular from the right of access to a lawyer

Derogations were identified in 20 other Member States, justified by risks to individuals or for investigation needs. In some cases, national legislation reflecting the situations might not clearly state that all the derogations should be applied only in exceptional circumstances and to the extent justified in the light of the particular circumstances of the case. Another concern is that the possibility to derogate may go beyond the pre-trial stage of the proceedings.

(3) Waiving the right of access to a lawyer

A significant number of Member States have legislation in place governing the possibility to waive the right of access to a lawyer. No such legislation exists in five Member States. One Member State offers no possibility to waive the right of access to a lawyer, and defence is thus always mandatory.

(4) The right of access to a lawyer in the Member State issuing a European arrest warrant

In most Member States, legislation provides for application of some or all the rules concerning criminal proceedings mutatis mutandis. This means that the substance of the rights granted in European arrest warrant cases corresponds to the right that suspects and accused persons enjoy during national criminal proceedings. In five Member States, the transposition of the right of access to a lawyer is based exclusively on specific rules regulating European arrest warrant proceedings and addressing the rights of the Directive in that context.

Improving transposition

The report concludes that while there is currently no need to revise the Directive, its transposition into national law and practical application need to be further improved. Shortcomings risk to affect the correct implementation of the other procedural rights directives, in particular Directive (EU) 2016/1919 on legal aid in criminal proceedings, which builds upon this Directive (see Article 2(1) of Directive (EU) 2016/1919). Directive (EU) 2016/1919 had to be transposed by Member States by 5 May 2019.

The Commission will continue to assess Member States' compliance with the Directive and take every appropriate measure to ensure conformity with its provisions throughout the European Union.