Basic information

2013/0409(COD) COD - Ordinary legislative procedure (ex-codecision procedure) Directive	Procedure completed
Legal aid for suspects and accused persons in criminal proceedings and for requested persons in European arrest warrant proceedings See also 2011/0154(COD) **Subject** 1.10 Fundamental rights in the EU, Charter 7.40.04 Judicial cooperation in criminal matters	

Key players

European Parliament

Committee responsible	Rapporteur	Appointed
LIBE Civil Liberties, Justice and Home Affairs	DE JONG Dennis (GUE/NGL)	03/09/2014
	Shadow rapporteur DATI Rachida (PPE) SIPPEL Birgit (S&D) KIRKHOPE Timothy (ECR) MICHEL Louis (ALDE) SARGENTINI Judith (Verts/ALE)	

Former committee responsible	Former rapporteur	Appointed
LIBE Civil Liberties, Justice and Home Affairs		

Committee for opinion	Rapporteur for opinion	Appointed
JURI Legal Affairs	The committee decided not to give an opinion.	

Former committee for opinion	Former rapporteur for opinion	Appointed
JURI Legal Affairs		

Council of the European Union	**Council configuration**	**Meetings**	**Date**
	Justice and Home Affairs (JHA)	3490	2016-10-14

European Commission	**Commission DG**	**Commissioner**
	Justice and Consumers	REDING Viviane

Key events

Date	Event	Reference	Summary
27/11/2013	Legislative proposal published	COM(2013)0824	Summary
13/01/2014	Committee referral announced in Parliament, 1st reading		
20/10/2014	Resumption of business from the previous parliamentary term		
06/05/2015	Vote in committee, 1st reading		
06/05/2015	Committee decision to open interinstitutional negotiations with report adopted in committee		
18/05/2015	Committee report tabled for plenary, 1st reading	A8-0165/2015	Summary
04/10/2016	Decision by Parliament, 1st reading	T8-0368/2016	Summary
04/10/2016	Results of vote in Parliament		
04/10/2016	Debate in Parliament		
14/10/2016	Act adopted by Council after Parliament's 1st reading		
26/10/2016	Final act signed		
26/10/2016	End of procedure in Parliament		
04/11/2016	Final act published in Official Journal		

Technical information

Procedure reference	2013/0409(COD)
Procedure type	COD - Ordinary legislative procedure (ex-codecision procedure)
Procedure subtype	Legislation
Legislative instrument	Directive
Amendments and repeals	See also 2011/0154(COD)
Legal basis	Treaty on the Functioning of the European Union TFEU 082-p2
Stage reached in procedure	Procedure completed
Committee dossier	LIBE/8/00271

Documentation gateway

European Parliament

Document type	Committee	Reference	Date	Summary
Committee draft report		PE544.135	26/11/2014	
Amendments tabled in committee		PE546.882	03/02/2015	
Committee report tabled for plenary, 1st reading/single reading		A8-0165/2015	18/05/2015	Summary
Text adopted by Parliament, 1st reading/single reading		T8-0368/2016	04/10/2016	Summary

Council of the EU

Document type	Reference	Date	Summary
Draft final act	00033/2016/LEX	26/10/2016	

European Commission

Document type	Reference	Date	Summary
Legislative proposal	COM(2013)0824	27/11/2013	Summary
Document attached to the procedure	SWD(2013)0476	27/11/2013	
Document attached to the procedure	SWD(2013)0477	27/11/2013	
Document attached to the procedure	SWD(2013)0499	27/11/2013	
Commission response to text adopted in plenary	SP(2016)805	29/11/2016	
Follow-up document	COM(2023)0044	01/02/2023	

National parliaments

Document type	Parliament /Chamber	Reference	Date	Summary
Contribution	PT_PARLIAMENT	COM(2013)0824	05/02/2014	
Contribution	ES_PARLIAMENT	COM(2013)0824	27/02/2014	
Contribution	IT_CHAMBER	COM(2013)0824	27/02/2014	
Contribution	IT_SENATE	COM(2013)0824	27/02/2014	
Contribution	CZ_SENATE	COM(2013)0824	05/06/2014	

Additional information

Source	Document	Date

European Commission	EUR-Lex	

Final act	
Directive 2016/1919 OJ L 297 04.11.2016, p. 0001	Summary
Corrigendum to final act 32016L1919R(01)	Summary

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.

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

2013/0409(COD) - 26/10/2016 - Corrigendum to final act

CORRIGENDUM to Directive (EU) 2016/1919 of the European Parliament and of the Council of 26 October 2016 on legal aid for suspects and accused persons in criminal proceedings and for requested persons in European arrest warrant proceedings (OJ L 297 of 4.11.2016, p.1**).**

NB: the corrigenda relate to the dates and time-limits initially provided with respect to : (i) submission of available data to the Commission showing how the rights laid down in this Directive have been implemented; (ii) the Commission report on the implementation of the Directive; (iii) the time-limit for transposition.

PURPOSE: to set out common minimum rules governing the right to provisional legal aid in criminal proceedings.

LEGISLATIVE ACT: Directive (EU) 2016/1919 of the European Parliament and of the Council on legal aid for suspects and accused persons in criminal proceedings and for requested persons in European arrest warrant proceedings.

CONTENT: this Directive lays down **common minimum rules concerning the right to legal aid** for: (i) suspects and accused persons in criminal proceedings; and (ii) persons who are the subject of European arrest warrant proceedings.

This Directive is the last legal text envisaged as part the **roadmap** for strengthening procedural rights of suspected or accused persons in criminal proceedings adopted by the Council in November 2009.

Up to now, **five measures** on procedural rights in criminal proceedings have been adopted pursuant to the Roadmap to date, namely Directives of the European Parliament and the Council:

- Directive 2010/64/EU on the right to interpretation and translation,
- Directive 2012/13/EU on the right to information,
- Directive 2013/48/EU on the right of access to a lawyer in criminal proceedings,
- Directive 2016/343/EU on the presumption of innocence,
- Directive 2016/800/EU on procedural safeguards for children.

Scope: this 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.

This Directive 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.

This 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.

In any event, this Directive applies when a decision on detention is taken, and during detention**, at any stage of the proceedings** until the conclusion of the proceedings.

Legal aid in criminal proceedings: Member States shall ensure that 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.

To define whether a person is eligible to legal aid, EU countries will be able to use a means and a merits test.

A "means test" aims at assessing whether the person effectively lacks sufficient resources to pay for legal assistance, while **a "merits test"** allows to assess whether the provision of legal aid would be in the interest of justice in the light of the circumstances of the case.

Decisions and remedies: 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.

Member States shall ensure that suspects, accused persons and requested persons have an **effective remedy** under national law in the event of a breach of their rights under this Directive.

The particular needs of **vulnerable persons** shall be taken into account in the implementation of this Directive.

Provision of data and report: by 5 May 2021 and every three years thereafter, Member States shall submit available data to the Commission showing how the rights laid down in this Directive have been implemented.

By 5 May 2022, and every three years thereafter, the Commission shall submit a report on the implementation of this Directive.

ENTRY INTO FORCE: 24.11.2016.

TRANSPOSITION: 5.5.2019 at the latest.

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

2013/0409(COD) - 27/11/2013 - Legislative proposal

PURPOSE: to set out common minimum rules governing the right to provisional legal aid for suspects or accused persons in criminal proceedings.

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

ROLE OF THE EUROPEAN PARLIAMENT: the European Parliament decides in accordance with the ordinary legislative procedure and on an equal footing with the Council.

BACKGROUND: the Stockholm Programme put a strong focus on the strengthening of the rights of individuals in criminal proceedings. The European Council asked the Commission to put forward proposals setting out a step by step approach to **strengthening the rights of suspects and accused persons.**

Up to now, three measures have been adopted: Directive 2010/64/EU on the right to interpretation and translation, Directive 2012/13/EU on the right to information and Directive 2013/48/EU on the right of access to a lawyer in criminal proceedings.

The proposal continues this work and is part of a **series of measures** on criminal justice which includes: (i) a directive on strengthening certain aspects of the presumption of innocence and of the right to be present at trial in criminal proceedings; (ii) a directive on procedural safeguards for children suspected or accused in criminal proceedings.

This measure is presented together with a Commission Recommendation on the right to legal aid for suspects or accused persons in criminal proceedings.

By establishing **minimum rules** on the protection of procedural rights of suspects or accused persons, this Directive should strengthen the mutual trust of judicial authorities and can thus help improve **mutual recognition** of decisions in criminal matters.

IMPACT ASSESSMENT: the Commission has undertaken an impact assessment in support of its proposal.

CONTENT :the draft directive aims to:

- ensure the effectiveness of the **right of access to a lawyer at an early stage in the criminal proceedings** for suspects and accused persons deprived of liberty;
- ensure that requested persons in **European arrest warrant proceedings** have access to legal aid to ensure the right of access to a lawyer in both the executing and issuing Member State ("right of dual defence").

The directive will apply from the **deprivation of liberty**, i.e. as from the moment one is taken into police custody or similar custody, which also covers periods before formal charge and arrest has taken place.

Provisional legal aid: it is in the early phase of the proceedings, especially if deprived of liberty, that suspects or accused persons will be the most vulnerable and most in need of legal aid to be assisted by a lawyer. Therefore, the draft directive makes provisions for provisional legal aid.

The proposal states the exercise of the right to provisional legal aid and access to a lawyer must become practicable and effective **without undue delay after deprivation of liberty and before any questioning.** The right to provisional legal aid should last at least until the competent authority has made the final decision on whether the suspect or accused person is eligible and benefits from legal aid.

The right to provisional legal aid also applies to requested persons in European arrest warrant proceedings who are deprived of liberty.

Legal aid for requested persons: in order to improve mutual trust and make the **right to dual defence** in European arrest warrant proceedings effective (in both the executing and issuing Member State), the Directive also requires Member States to give access to legal aid, beyond provisional legal aid as the requested persons are not always deprived of liberty.

In the period leading up to the final decision on whether the requested person benefits from legal aid in the executing Member State, requested persons that are deprived of liberty are entitled to provisional legal aid in the executing Member State

Non-regression clause: the proposal aims to ensure that setting common minimum standards does not have the effect of lowering existing higher standards in certain Member States and the standards in the Charter and the European Convention on Human Rights.

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

2013/0409(COD) - 18/05/2015 - Committee report tabled for plenary, 1st reading/single reading

The Committee on Civil Liberties, Justice and Home Affairs adopted the report by Dennis DE JONG (GUE/NGL, NL) on the proposal for a regulation of the European Parliament and of the Council 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.

The parliamentary committee recommended that the European Parliament's position adopted at first reading following the ordinary legislative procedure amends the Commission proposal as follows.

Purpose: while the European Commission proposal would guarantee the right to "provisional" legal aid, Members suggested broadening the scope of the proposal to include the **right to "ordinary" legal aid** to suspects and individuals charged in criminal proceedings, as well as for those whose surrender is sought in the context of the execution of a European arrest warrant.

The Directive should aim to increase the effectiveness of Directive 2013/48/EU on the right of access to a lawyer which states that measures to effectively exercise this right could include arrangements for legal aid.

Scope: the Directive shall also apply to suspects in criminal proceedingsor any legally binding Union instrument on **procedural safeguards for child suspects**.

Without prejudice to the right to a fair trial, in respect of minor offences, the Directive shall only apply to the **proceedings before a court having jurisdiction in criminal matters**. In any event, this Directive shall fully apply where the suspect or accused person is deprived of liberty, **irrespective of the stage of the criminal proceedings**.

Access to legal aid: Members clarified the precise nature of the rights concerned. In particular, **provisional aid should not be suspended** until a final decision has been taken on ordinary legal aid. Moreover, the right to access to a lawyer also applies in the case of a negative decision on legal aid: in that case, there should be sufficient time to find a suitable lawyer.

Reimbursement of costs: exceptionally, the costs relating to provisional legal aid can be recovered from suspects or accused persons and requested persons if it is established through a **final decision** that those persons do not meet the eligibility criteria for ordinary legal aid as applicable under national law, and if they have **intentionally provided the competent authorities with false information** on their personal financial situation.

The conditions attached to recovery of costs should be **clear and reasonable** and **take account of the specific financial situation** of the suspect or accused person or the requested person.

E**valuation of resources and merits**: Members introduced measures whereby legal aid should be granted subject to an assessment of the financial means of the applicant ("means test") and/or of whether it is in the interests of justice to provide legal aid ("merits test") in the case concerned.

- The **means test** should be based on all relevant and objective factors, such as income, capital, family situation, standard of living and the cost of a legal aid lawyer;
- The **merits test** shall include an assessment of the urgency and complexity of the case, the seriousness of the offence and the severity of the potential penalty that may be imposed, as well as the social and personal circumstances of the suspect or accused person or the requested person concerned.

Information and decisions: information on legal aid in criminal proceedings should be easily **accessible and understandable** to suspects including i) information on how and where to apply for such aid, ii) **transparent criteria** on eligibility for legal aid, as well iii) as information on the possibilities available in circumstances where access to legal aid is refused or a legal aid lawyer provides insufficient legal assistance.

Decisions on whether or not to grant legal aid, and the assignment of lawyers, should be made **promptly by an independent competent authority**. Member States should ensure that the responsible authorities make decisions diligently and that there are substantial guarantees against arbitrariness.

Quality of legal aid: Members introduced guarantees of the quality of legal aid. Thus, Member States should ensure that:

- ordinary legal aid is provided at **all stages** of the criminal justice process;
- systems ensuring the **quality and independence of legal aid lawyers** are put in place or maintained, in particular a system of accreditation for legal aid lawyers as well as education and continuous professional;
- suspect or accused person and requested person have the right to have the legal aid lawyer assigned to them **replaced** once;
- any decision rejecting in part or in full an application for legal aid is given to the suspect or accused person and the requested person **in writing**.

Right of appeal and remedies: any person who applies for legal aid under this Directive shall have the right to appeal a decision refusing legal aid before an independent court, with a view to preserving the right to a fair trial and the right to defence. Suspects, accused persons and requested persons should have an effective remedy if their rights under this Directive have been breached.

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

2013/0409(COD) - 26/10/2016 - Final act

PURPOSE: to set out common minimum rules governing the right to provisional legal aid in criminal proceedings.

LEGISLATIVE ACT: Directive (EU) 2016/1919 of the European Parliament and of the Council on legal aid for suspects and accused persons in criminal proceedings and for requested persons in European arrest warrant proceedings.

CONTENT: this Directive lays down **common minimum rules concerning the right to legal aid** for: (i) suspects and accused persons in criminal proceedings; and (ii) persons who are the subject of European arrest warrant proceedings.

This Directive is the last legal text foreseen as part the **roadmap** for strengthening procedural rights of suspected or accused persons in criminal proceedings adopted by the Council in November 2009.

Up to now, **five measures** on procedural rights in criminal proceedings have been adopted pursuant to the Roadmap to date, namely Directives of the European Parliament and the Council:

- Directive 2010/64/EU on the right to interpretation and translation,
- Directive 2012/13/EU on the right to information,
- Directive 2013/48/EU on the right of access to a lawyer in criminal proceedings,
- Directive 2016/343/EU on the presumption of innocence,
- Directive 2016/800/EU on procedural safeguards for children.

Scope: this 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.

This Directive 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.

This 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.

In any event, this Directive applies when a decision on detention is taken, and during detention, **at any stage of the proceedings** until the conclusion of the proceedings.

Legal aid in criminal proceedings: Member States shall ensure that 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.

To define whether a person is eligible to legal aid, EU countries will be able to use a means and a merits test.

A **"means test"** aims at assessing whether the person effectively lacks sufficient resources to pay for legal assistance, while a **"merits test"** allows to assess whether the provision of legal aid would be in the interest of justice in the light of the circumstances of the case.

Decisions and remedies: 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.

Member States shall ensure that suspects, accused persons and requested persons have an **effective remedy** under national law in the event of a breach of their rights under this Directive.

The particular needs of **vulnerable persons** shall be taken into account in the implementation of this Directive.

Provision of data and report: by 25 May 2021, and every three years thereafter, Member States shall submit available data to the Commission showing how the rights laid down in this Directive have been implemented.

By 25 May 2022, and every three years thereafter, the Commission shall submit a report on the implementation of this Directive.

ENTRY INTO FORCE: 24.11.2016.

TRANSPOSITION: 25.5.2019 at the latest.