

**Proposal for a Directive of the European Parliament and of the Council on the right to
information in criminal proceedings**

Trilogue 18 April 2011

Comparative table^{*}

^{*} Modifications with respect to the document prepared in view of the trilogue on 5 April 2011 have been made in the "Draft Council position" column in relation to Articles 1-5.

COMMISSION PROPOSAL (DOC. NO. 12564/10)	COUNCIL GENERAL APPROACH (DOC. NO. 17503/10)	LIBE DRAFT AMENDMENTS	DRAFT COUNCIL POSITION
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Proposal for a Directive of the European Parliament and of the Council on the right to information in criminal proceedings

Visa / Citations

Having regard to the Treaty on the Functioning of the European Union, and in particular Article 82(2) thereof,	Having regard to the Treaty on the Functioning of the European Union, and in particular Article 82(2) thereof,		
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COMMISSION PROPOSAL (DOC. NO. 12564/10)	COUNCIL GENERAL APPROACH (DOC. NO. 17503/10)	LIBE DRAFT AMENDMENTS	DRAFT COUNCIL POSITION
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Recitals ²

<p>(3) The European Union has set itself the objective of maintaining and developing an area of freedom, security and justice. According to the conclusions of the European Council in Tampere of 15 and 16 October 1999, and in particular point 33 thereof, the principle of mutual recognition should become the cornerstone of judicial cooperation in both civil and criminal matters within the Union, since enhanced mutual recognition of judicial decisions and judgments and the necessary approximation of legislation would facilitate cooperation between authorities and the judicial protection of individual rights.</p>	<p>(1)³ The European Union has set itself the objective of maintaining and developing an area of freedom, security and justice. According to the conclusions of the European Council in Tampere of 15 and 16 October 1999, and in particular point 33 thereof, the principle of mutual recognition should become the cornerstone of judicial cooperation in both civil and criminal matters within the Union, since enhanced mutual recognition of judicial decisions and judgments and the necessary approximation of legislation would facilitate cooperation between authorities and the judicial protection of individual rights.</p>		
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² In order to facilitate the reading of the text, the order of Recitals, of the Articles and their paragraphs as agreed in the Council general approach has been maintained.

³ For the Recitals which correspond to those of Directive 2010/64/EU on the right to translation and interpretation in criminal proceedings, the text of the current instrument will be aligned to that of Directive 2010/64/EU at the stage of the revision by Jurist Linguists. Changes should only be made where they reflect the specific subject of the current Directive.

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<p>(4) On 29 November 2000 the Council, in accordance with the Tampere Conclusions, adopted a programme of measures to implement the principle of mutual recognition of decisions in criminal matters⁴. The introduction to the programme of measures states that mutual recognition is "designed to strengthen cooperation between Member States" and "to enhance the protection of individual rights".</p>	<p>(2) On 29 November 2000 the Council, in accordance with the Tampere Conclusions, adopted a programme of measures to implement the principle of mutual recognition of decisions in criminal matters⁵. The introduction to the programme of measures states that mutual recognition is "designed to strengthen cooperation between Member States" and "to enhance the protection of individual rights".</p>		
<p>(5) Implementation of the principle of mutual recognition of decisions in criminal matters presupposes that Member States have trust in each other's criminal justice systems. The extent of the mutual recognition exercise is very much dependent on a number of parameters, which include mechanisms for safeguarding the rights of suspects and common minimum standards necessary to facilitate the application of the principle of mutual recognition.</p>	<p>(3) Implementation of the principle of mutual recognition of decisions in criminal matters presupposes that Member States have trust in each other's criminal justice systems. The extent of the mutual recognition exercise is very much dependent on a number of parameters, which include mechanisms for safeguarding the rights of suspected or accused persons and common minimum standards necessary to facilitate the application of the principle of mutual recognition.</p>		

⁴ OJ C 12, 15.1.2001, p. 10.

⁵ OJ C 12, 15.1.2001, p. 10.

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<p>(6) Mutual recognition can only operate effectively in a spirit of confidence, whereby not only judicial authorities, but all actors in the criminal process see decisions of the judicial authorities of other Member States as equivalent to their own, implying not only trust in the adequacy of one's partners' rules, but also trust that those rules are correctly applied.</p>	<p>(4) Mutual recognition can only operate effectively in a spirit of confidence, whereby not only judicial authorities, but all actors in the criminal process see decisions of the judicial authorities of other Member States as equivalent to their own, implying not only trust in the adequacy of one's partners' rules, but also trust that those rules are correctly applied.</p>		
<p>(1) Article 47 of the Charter of Fundamental Rights of the European Union (the Charter), Article 6 of the European Convention for the Protection of Human Rights and Fundamental Freedoms (ECHR) and Article 14 of the International Covenant on Civil and Political Rights (ICCPR) enshrine the right to a fair trial. Article 48 of the Charter guarantees respect for the rights of the defence.</p>	<p>(5) Article 47 of the Charter of Fundamental Rights of the European Union (the Charter) and Article 6 of the European Convention for the Protection of Human Rights and Fundamental Freedoms (ECHR) (...) enshrine the right to a fair trial. Article 48 of the Charter guarantees respect for the rights of the defence.</p>		

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(2) Article 6 of the Charter and Article 5 of the ECHR enshrine the rights to liberty and security, the limitations to which may not exceed those permitted by the ECHR in the wording of its Article 5 and inferred from the case-law of the European Court of Human Rights.	(6) Article 6 of the Charter and Article 5 of the ECHR enshrine the rights to liberty and security, the limitations to which may not exceed those permitted by the ECHR in the wording of its Article 5 and inferred from the case-law of the European Court of Human Rights.		
(7) Although Member States are parties to the ECHR and the ICCPR, experience has shown that this in itself does not always provide a sufficient degree of trust in the criminal justice systems of other Member States.	(7) Although Member States are parties to the ECHR (...), experience has shown that this in itself does not always provide a sufficient degree of trust in the criminal justice systems of other Member States.		
(8) Strengthening mutual trust requires detailed rules on the protection of the procedural rights and guarantees stemming from the Charter, the ECHR and the ICCPR. In the implementation of this Directive, Member States should not in any event fall below the standards set out in the Convention and the Charter as developed by the case-law of the Court of Justice of the European Union and the European Court of Human Rights.	(8) Strengthening mutual trust requires detailed rules on the protection of the procedural rights and guarantees stemming from the Charter <i>and</i> the ECHR (...).		

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<p>(9) Article 82(2) of the Treaty provides for the establishment of minimum rules applicable in the Member States so as to facilitate mutual recognition of judgments and judicial decisions and police and judicial cooperation in criminal matters having a cross-border dimension. Point (b) of Article 82(2) refers to "the rights of individuals in criminal procedure" as one of the areas in which minimum rules may be established.</p>	<p>(9) Article 82(2) of the Treaty provides for the establishment of minimum rules applicable in the Member States so as to facilitate mutual recognition of judgments and judicial decisions and police and judicial cooperation in criminal matters having a cross-border dimension. Point (b) of Article 82(2) refers to "the rights of individuals in criminal procedure" as one of the areas in which minimum rules may be established.</p>		

COMMISSION PROPOSAL (DOC. NO. 12564/10)	COUNCIL GENERAL APPROACH (DOC. NO. 17503/10)	LIBE DRAFT AMENDMENTS	DRAFT COUNCIL POSITION
<p>10) Common minimum rules should lead to increased confidence in the criminal justice systems of all Member States, which in turn should lead to more efficient judicial cooperation in a climate of mutual trust and to the promotion of a fundamental rights culture in the European Union. They should also remove obstacles to free movement of citizens. Such common minimum rules should apply to information in criminal proceedings.</p>	<p>(10) Common minimum rules should lead to increased confidence in the criminal justice systems of all Member States, which in turn should lead to more efficient judicial cooperation in a climate of mutual trust. (...) Such common minimum rules should apply to information in criminal proceedings.</p>		

COMMISSION PROPOSAL (DOC. NO. 12564/10)	COUNCIL GENERAL APPROACH (DOC. NO. 17503/10)	LIBE DRAFT AMENDMENTS	DRAFT COUNCIL POSITION
<p>11) On 30 November 2009, the Council adopted the Roadmap for strengthening procedural rights of suspected and accused persons in criminal proceedings ("the Roadmap")⁶. Taking a step-by-step approach, the Roadmap calls for the adoption of measures regarding the right to translation and interpretation, the right to information on rights and information about the charges, the right to legal advice and legal aid, the right to communication with relatives, employers and consular authorities, and regarding special safeguards for suspected or accused persons who are vulnerable. The Roadmap emphasises that the order of the rights is indicative only and thus implies that it may be changed according to priorities. It is designed to operate as a whole; only when all its component parts have been implemented will its benefits be felt in full.</p>	<p>(11) On 30 November 2009, the Council adopted the Roadmap for strengthening procedural rights of suspected and accused persons in criminal proceedings ("the Roadmap")⁷. Taking a step-by-step approach, the Roadmap calls for the adoption of measures regarding the right to translation and interpretation, the right to information on rights and information about the <i>accusation</i>, the right to legal advice and legal aid, the right to communication with relatives, employers and consular authorities, and regarding special safeguards for suspected or accused persons who are vulnerable. The Roadmap emphasises that the order of the rights is indicative only and thus implies that it may be changed according to priorities. It is designed to operate as a whole; only when all its component parts have been implemented will its benefits be felt in full.</p>		

⁶ OJ C 295, 4.12.2009, p. 1.

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<p>(12) In the Stockholm Programme, adopted on 11 December 2009⁸, the European Council welcomed the Roadmap and made it part of the Stockholm Programme (point 2.4.). The European Council underlined the non-exhaustive character of the Roadmap, by inviting the Commission to examine further aspects of minimum procedural rights for suspected and accused persons, and to assess whether other issues, for instance the presumption of innocence, need to be addressed, in order to promote better cooperation in this area.</p>	<p>(12) In the Stockholm Programme, adopted on 11 December 2009⁹, the European Council welcomed the Roadmap and made it part of the Stockholm Programme (point 2.4.). The European Council underlined the non-exhaustive character of the Roadmap, by inviting the Commission to examine further aspects of minimum procedural rights for suspected and accused persons, and to assess whether other issues, for instance the presumption of innocence, need to be addressed, in order to promote better cooperation in this area.</p>		
<p>(13) The first measure on the Roadmap is a Directive of the European Parliament and of the Council on the rights to interpretation and to translation in criminal proceedings¹⁰.</p>	<p>(13) The first measure on the Roadmap is a Directive of the European Parliament and of the Council on the rights to interpretation and to translation in criminal proceedings¹¹.</p>		

⁸ OJ C 115, 4.5.2010.

⁹ OJ C 115, 4.5.2010.

¹⁰ Directive 2010/64/EU of the European Parliament and of the Council on the rights to interpretation and translation in criminal proceedings of 20 October 2010.

¹¹ Directive 2010/64/EU of the European Parliament and of the Council on the rights to interpretation and translation in criminal proceedings of 20 October 2010.

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<p>(14) This Directive relates to measure B of the Roadmap. It lays down common minimum standards to be applied in the field of information about rights and about the charge to be given to persons suspected or accused of having committed a criminal offence, with a view to enhancing mutual trust among Member States. The Directive promotes the application of the Charter, and in particular its Articles 6, 47 and 48 by building upon Articles 5 and 6 ECHR as interpreted by the European Court of Human Rights. In its Communication "Delivering an area of freedom, security and justice for Europe's citizens", the Action Plan Implementing the Stockholm Programme¹², the Commission announced the presentation of a proposal on the right to information in 2010.</p>	<p>(14) The <i>present</i> Directive relates to measure B of the Roadmap. It lays down common minimum standards to be applied in the field of information about rights and about the <i>accusation</i> to be given to persons suspected or accused of having committed a criminal offence, with a view to enhancing mutual trust among Member States. The Directive <i>builds on the rights laid down in</i> the Charter, and in particular its Articles 6, 47 and 48 by building upon Articles 5 and 6 ECHR as interpreted by the European Court of Human Rights. In its Communication "Delivering an area of freedom, security and justice for Europe's citizens", the Action Plan Implementing the Stockholm Programme¹³, the Commission announced the presentation of a proposal on the right to information in 2010.</p>		
<p>(15) This Directive does not 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.</p>	<p>(15) (...)</p>	<p><i>deleted</i></p> <p>[AMENDMENT 2]</p>	<p>In conformity with Council general approach.</p>

¹² COM(2010) 171, 20.4.2010.

¹³ COM(2010) 171, 20.4.2010.

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	<p><i>(15a) In some Member States an authority other than a court having jurisdiction in criminal matters has competence for imposing sanctions in relation to relatively minor offences. That may be the case, for example, in relation to traffic offences which are committed on a large scale and which might be established following a traffic control. In such situations, it would be unreasonable to require that the competent authority ensure all the rights under this Directive. 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, this Directive should therefore apply only to the proceedings before that court following such an appeal or referral.</i></p>	<p><i>(14a) In some Member States, an authority other than a court having jurisdiction in criminal matters has competence for imposing sanctions in relation to relatively minor offences. That may be the case, for example, in relation to traffic offences which are committed on a large scale and which might be established following a traffic control. In such situations, it would be unreasonable to require that the competent authority ensure all the rights under this Directive. 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, this Directive should therefore apply only to the proceedings before that court following such an appeal or referral.</i></p> <p>[AMENDMENT 1]</p>	<p>In conformity with Council general approach.</p>

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<p>(16) The right to information about rights (which is inferred from the case-law of the European Court of Human Rights) should be explicitly established by the Directive. This Directive thus offers protection beyond that currently provided by the ECHR. Information about the charge is a right enshrined in Articles 5 and 6 of the ECHR as interpreted by the European Court of Human Rights and Articles 9 and 14 of the ICCPR. The provisions of this Directive should facilitate the application of those rights in practice, with a view to safeguarding the right to fair proceedings.</p>	<p>(16) The right to information about procedural rights (which is inferred from the case-law of the European Court of Human Rights) should be explicitly established by the Directive. (...)</p>		
<p>(17) The suspected or accused person should be able to know and understand what his rights are and be in a position to avail himself of those rights before any police questioning. He should be informed promptly and in a language he understands of the nature and cause of any accusation he faces and given information about immediately relevant rights.</p>	<p>(17) (...).</p>		

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<p>(18) Information about rights should be given to all suspected and accused persons promptly at the outset of criminal proceedings, be it orally or in writing. Information about rights to be given under this Directive should as a minimum requirement under this Directive include information on the right of access to a lawyer, the right to be informed of the charge and, where appropriate, to be given access to the case-file, the right to interpretation and translation for those who do not understand the language of the proceedings and the right to be brought promptly before a court if the suspected or accused person is arrested. This is without prejudice to information to be given on other procedural rights stemming from the Charter, the ECHR, the ICCPR and applicable EU legislation as interpreted by the relevant courts and tribunals.</p>	<p>(18) <i>The suspected or accused person should be informed in due time by the competent authorities of those rights, provided for under national law, which are essential to safeguard the fairness of the proceedings</i>, be it orally or in writing, <i>as provided for by this Directive</i>. Information about <i>those</i> rights should as a minimum requirement under this Directive include information on the right of access to a lawyer, <i>any entitlement to legal advice free of charge and the conditions for obtaining it</i>, the right to interpretation and translation (...), <i>the right to remain silent and, when the person is arrested, the information on the national law on the maximum length of deprivation of liberty before being brought before a judicial authority after arrest</i>. This is without prejudice to information to be given on other procedural rights stemming from the Charter, the ECHR, <i>national law</i> and applicable EU legislation as interpreted by the relevant courts and tribunals.</p>	<p>(18) Information about rights should be given to all suspected and accused persons promptly at the outset of criminal proceedings, orally and in writing. <i>Information about those rights should as a minimum requirement under this Directive include information on the right to interpretation and translation, any entitlement to legal advice and the conditions for obtaining it free of charge, the right to be informed of the accusation, the right to access to the evidentiary material related to the case, the right to remain silent, the right to contact relatives, employers and consular authorities, the right to medical care, the right to bail, information on the maximum length of deprivation of liberty according to national law before being brought before a judicial authority after arrest, information on how to challenge the arrest and how to obtain a review of the detention and on the maximum length of pre-trial detention applicable to the case</i>. This is without prejudice to information to be given on other procedural rights stemming from the Charter, the ECHR, the ICCPR and applicable EU legislation as interpreted by the relevant courts and tribunals.</p> <p>[AMENDMENT 3]</p>	

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	<p><i>(18a) In order to allow a practical and effective exercise of those rights, this information should be provided in due time with respect to the moment when the rights first become applicable in the course of the proceedings, for instance before first police questioning. Once the information about a particular right has been provided, it is understood that the competent authorities should not be required to reiterate it, unless the specific circumstances of the case or the specific rules laid down in national law so require.</i></p>		
		<p><i>(18a) In the implementation and practical application of this Directive, due regard should be given to Directive 2010/64/EU on the right to interpretation and translation in criminal proceedings</i></p> <p>[AMENDMENT 4]</p>	
		<p><i>(21a) The competent authority must make efforts to ensure, so far as practicable, that the suspected or accused person understands the rights which have been explained to him.</i></p> <p>[AMENDMENT 8]</p>	

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		<p><i>(18) b The use of new technologies and online access to the whole evidentiary material related to the case would effectively enhance the right to information in criminal proceedings while at the same time reducing costs and minimizing the risk of possible damage of the evidentiary material related to the case.</i></p> <p>[AMENDMENT 5]</p>	

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<p>19) Where a suspected or accused person is arrested, information about these immediately relevant procedural rights should be given by means of a written Letter of Rights drafted in an easily comprehensible manner so as to ensure that he has an actual understanding of his rights. To help Member States design such a Letter of Rights and to promote greater consistency between Member States, a model of the Letter of Rights, which Member States may use, is provided in Annex I to the Directive. This model is indicative and may be subject to review in the context of the report on implementation to be presented by the European Commission pursuant to Article 12 of the Directive and also once all the Roadmap measures have come into force. The actual letter based on this model should also include other relevant procedural rights that apply in Member States.</p>	<p>(19) Where a suspected or accused person is arrested, information about applicable procedural rights should be given by means of a written Letter of Rights drafted in an easily comprehensible manner so as to assist the actual understanding of his rights. [To help Member States design such a Letter of Rights (...), a model of the Letter of Rights, which Member States may use, is provided in Annex I to the Directive. This model is indicative and may be subject to review in the context of the report on implementation to be presented by the European Commission pursuant to Article 12 of the Directive and also once all the Roadmap measures have come into force. The actual letter (...) may also include other relevant procedural rights that apply in Member States] ¹⁴.</p>	<p>(19) Where a suspected or accused person is arrested or questioned at a police station, information about these immediately relevant procedural rights should be given by means of a written Letter of Rights drafted in an easily comprehensible manner so as to ensure that he has an actual understanding of his rights. A model of the Letter of Rights is provided in Annex I to the Directive. This model is indicative and to be interpreted as containing the minimum of information Member States are obliged to give to suspects and accused. This model may be subject to review in the context of the report on implementation to be presented by the European Commission pursuant to Article 12 of the Directive and also once all the Roadmap measures and eventually other measures have come into force. The actual letter based on this model should also include other relevant procedural rights that apply in Member States.</p> <p>[AMENDMENT 6]</p>	

¹⁴ See footnote under Article 4(2).

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	<p><i>(19a) The arrested person should be allowed to keep in his possession the Letter of Rights throughout the time he is deprived of his liberty. However, under exceptional circumstances, when necessary to safeguard the safety of the person under arrest or another person, competent authorities may decide not to allow the arrested person to keep in his possession the Letter of Rights, provided that he has been fully informed about its content.</i></p>		
	<p><i>(19b) (...).</i></p>		
	<p><i>(19c) When providing the suspected or accused person with information in accordance with this Directive, competent authorities should pay particular attention to suspected or accused person who cannot understand or follow the content or the meaning of the information, owing, for example, to their young age, mental or physical condition.</i></p>		

COMMISSION PROPOSAL (DOC. NO. 12564/10)	COUNCIL GENERAL APPROACH (DOC. NO. 17503/10)	LIBE DRAFT AMENDMENTS	DRAFT COUNCIL POSITION
(20) A person accused of having committed a criminal offence should be given all the information on the charge necessary to enable him to prepare his defence and to safeguard the fairness of the proceedings.	(20) A person accused of having committed a criminal offence should be given all the information on the criminal charge necessary to enable him to prepare his defence and to safeguard the fairness of the proceedings.		
(21) The most effective way of ensuring that a suspected or accused person has sufficient information about the charge is to allow him or his lawyer access to the case-file. This access may be restricted where it poses a serious risk to the life of another person or the internal security of the Member State.	(21) (...).	(21) The most effective way of ensuring that a suspected or accused person has sufficient information about the <i>accusation</i> is to allow him or his lawyer access to the <i>evidentiary material related to the case</i> . This access may <i>exceptionally</i> be restricted only <i>on the basis of a reasoned decision by a</i> competent judicial authority. [AMENDMENT 7]	

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	<p><i>(21a) For the purpose of this Directive, access to the materials of the case should include at least access to the material evidence, as defined in national law, which is for or against the suspected or accused person and in the possession of the competent authorities in relation to the specific criminal case. Such information may be contained in a case file or otherwise held by competent authorities in any appropriate way in accordance with national law.</i></p>		

COMMISSION PROPOSAL (DOC. NO. 12564/10)	COUNCIL GENERAL APPROACH (DOC. NO. 17503/10)	LIBE DRAFT AMENDMENTS	DRAFT COUNCIL POSITION
	<p><i>(21b) Access to the material evidence for or against the accused in the possession of the competent authorities, as provided for under this Directive, may be refused, according to national law, if this may lead to the serious risk for the fundamental rights of another person or if strictly necessary to safeguard an important public interest. This must be weighed against the rights of defence of the suspected or accused person, taking into account the different phases of the proceedings. These limitations should be interpreted strictly and in accordance with the principle of the right to a fair trial as provided by the ECHR and interpreted by case law of the European Court of Human Rights.</i></p>		
	<p><i>(21c) Access to the materials of the case may be provided directly, by allowing consultation of the materials or documents contained therein, or indirectly, by providing copies or information about its contents, if so required by national law.</i></p>		

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	<i>(21d) Consultation of the materials of the case, as provided for by this Directive, should be provided free of charge. This is without prejudice to provisions of the national laws of the Member States requiring payment of any fees for copies to be extracted from the case file or for the sending costs to the person concerned or his lawyer.</i>		
(22) Member States should have a mechanism to verify that the suspected or accused persons have received all the information about rights and about the charge to which they are entitled.	(22) (...)		
	<i>(22a) A suspected or accused person or his lawyer should have the right to challenge, in accordance with procedures in national law, the possible failure or refusal of the competent authorities to provide the information in accordance with this Directive. That right does not entail the obligation for Member States to provide for a specific appeal procedure, a separate mechanism or complaint procedure in which such failure may be challenged.</i>		

COMMISSION PROPOSAL (DOC. NO. 12564/10)	COUNCIL GENERAL APPROACH (DOC. NO. 17503/10)	LIBE DRAFT AMENDMENTS	DRAFT COUNCIL POSITION
(23) Adequate training on procedural rights of suspected and accused persons should be provided to the relevant officials in Member States.	(23) <i>Without prejudice to judicial independence and differences in the organization of the judiciary across the Union, adequate training with respect to the objectives of this Directive</i> should be provided to the relevant officials in Member States.	(23) <i>Appropriate and effective</i> training on procedural rights of suspected and accused persons should be provided to the relevant officials in Member States. [AMENDMENT 9]	
	(23a) <i>Member States should undertake all the necessary action to comply with this Directive. A practical and effective implementation of some of the provisions such as the obligation to provide the suspected or accused person with information on his rights in simple and accessible language could be achieved by different means including non legislative measures such as appropriate training for the competent authorities or by a Letter of Rights drafted in a simple and non technical language so as to be easily understood by a lay person without any knowledge of criminal procedural law.</i>		

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<p>(24) In accordance with the United Nations Convention on the Rights of the Child, a child means every person below the age of 18 years. In all action relating to children, the child's best interests must be a primary consideration.</p>	<p>(24) (...).</p>	<p>(24) In accordance with the United Nations Convention on the Rights of the Child, a child means every person below the age of 18 years. In all action relating to children, the child's best interests must be a primary consideration.</p> <p><i>Children who are suspected or accused of having committed a criminal offence need specific protection due to their vulnerability on the grounds of age and should receive detailed information in simple and accessible language regarding the charges against them in accordance with their age and their level of maturity.</i></p> <p>[AMENDMENT 10]</p>	

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		<p><i>(24 a) In accordance with the case law on Article 3 of the European Convention for the Protection of Human Rights and Fundamental Freedoms (ECHR), Member States should ensure that a person's health and wellbeing are adequately secured, including by providing a person deprived of his or her liberty with medical assistance. Information relating to Member States' requirements under Article 3 ECHR should be provided on arrest.</i></p> <p>[AMENDMENT 11]</p>	

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<p>(25) The rights provided for in this Directive should also apply, <i>mutatis mutandis</i>, to proceedings for the execution of a European Arrest Warrant according to the Council Framework 2002/584/JHA of 13 June 2002 on the European Arrest Warrant and the surrender procedures between Member States¹⁵. To help Member States design such a Letter of Rights and to promote greater coherence between Member States a model form of the Letter of Rights, which Member States may use, is provided in Annex 1 to the Directive. This model form is indicative and may be subject to review in the context of the report on implementation to be presented by the European Commission pursuant to Article 12 of the Directive and also once all the Roadmap measures have come into force.</p>	<p>(25) The right <i>to be informed about rights on arrest</i> provided for in this Directive should also apply, <i>mutatis mutandis</i>, <i>to persons arrested for the purpose of</i> the execution of a European Arrest Warrant according to the Council Framework 2002/584/JHA of 13 June 2002 on the European Arrest Warrant and the surrender procedures between Member States¹⁶. <i>To help Member States design such a Letter of Rights (...) a model form of the Letter of Rights, which Member States may use, is provided in Annex II to the Directive. This model form is indicative and may be subject to review in the context of the report on implementation to be presented by the European Commission pursuant to Article 12 of the Directive and also once all the Roadmap measures have come into force</i>¹⁷.</p>	<p>(25) The rights provided for in this Directive should also apply, <i>mutatis mutandis</i>, to proceedings for the execution of a European Arrest Warrant according to the Council Framework 2002/584/JHA of 13 June 2002 on the European Arrest Warrant and the surrender procedures between Member States. This model is <i>indicative and to be interpreted as containing the minimum of information Member States are obliged to give to suspects and accused. This model</i> may be subject to review in the context of the report on implementation to be presented by the European Commission pursuant to Article 12 of the Directive and also once all the Roadmap measures <i>and eventually other measures</i> have come into force.</p> <p>[AMENDMENT 12]</p>	

¹⁵ OJ L 190 of 18.7.2002, p.1.

¹⁶ OJ L 190 of 18.7.2002, p.1.

¹⁷ See footnote under Article 5 with regard to the Annex II.

COMMISSION PROPOSAL (DOC. NO. 12564/10)	COUNCIL GENERAL APPROACH (DOC. NO. 17503/10)	LIBE DRAFT AMENDMENTS	DRAFT COUNCIL POSITION
<p>(26) The provisions of this Directive set minimum rules. Member States may extend the rights set out in this Directive in order to provide a higher level of protection in situations not explicitly dealt with in this Directive. The level of protection should never go below the standards provided by the ECHR, as interpreted in the case-law of the European Court of Human Rights.</p>	<p>(26) The provisions of this Directive set minimum rules. Member States may extend the rights set out in this Directive in order to provide a higher level of protection in situations not explicitly dealt with in this Directive. The level of protection should never go below the standards provided by the ECHR, as interpreted in the case-law of the European Court of Human Rights.</p>	<p>(26) The provisions of this Directive set minimum rules. Member States may extend the rights set out in this Directive in order to provide a higher level of protection (...). The level of protection should never go below the standards provided by the ECHR, as interpreted in the case-law of the European Court of Human Rights.</p> <p>[AMENDMENTS 13]</p>	
<p>(27) This Directive respects fundamental rights and observes the principles recognised by the Charter. In particular, this Directive seeks to promote the right to liberty, the right to a fair trial, the rights of the defence and the rights of the child. It has to be implemented accordingly.</p>	<p>(27) This Directive respects fundamental rights and observes the principles recognised by the Charter. In particular, this Directive seeks to promote the right to liberty, the right to a fair trial <i>and</i> the rights of the defence (...). It has to be implemented accordingly.</p>		
<p>(28) Member States should ensure that the provisions of this Directive, where they correspond to rights guaranteed by the ECHR are implemented consistently with those of the ECHR and as developed by the relevant case-law of the European Court of Human Rights.</p>	<p>(28) Member States should ensure that the provisions of this Directive, where they correspond to rights guaranteed by the ECHR are implemented consistently with those of the ECHR and as developed by the relevant case-law of the European Court of Human Rights.</p>		

COMMISSION PROPOSAL (DOC. NO. 12564/10)	COUNCIL GENERAL APPROACH (DOC. NO. 17503/10)	LIBE DRAFT AMENDMENTS	DRAFT COUNCIL POSITION
<p>(29) Since the aim of achieving common minimum standards cannot be achieved by Member States acting unilaterally, either at national, regional or local level, and can only be achieved at Union level, the European Parliament and the Council may adopt measures in accordance with the principle of subsidiarity as referred to in Article 5 of the Treaty on European Union. In accordance with the principle of proportionality, as set out in the latter Article, this Directive does not go beyond what is necessary in order to achieve that objective.</p>	<p>(29) Since the aim of achieving common minimum standards cannot be achieved by Member States acting unilaterally, either at national, regional or local level, and can only be achieved at Union level, the European Parliament and the Council may adopt measures in accordance with the principle of subsidiarity as referred to in Article 5 of the Treaty on European Union. In accordance with the principle of proportionality, as set out in the latter Article, this Directive does not go beyond what is necessary in order to achieve that objective.</p>		

COMMISSION PROPOSAL (DOC. NO. 12564/10)	COUNCIL GENERAL APPROACH (DOC. NO. 17503/10)	LIBE DRAFT AMENDMENTS	DRAFT COUNCIL POSITION
<p>(30) [In accordance with Articles 1, 2, 3 and 4 of Protocol on the position of the United Kingdom and Ireland in respect of the Area of Freedom, Security and Justice, annexed to the Treaty on European Union and to the Treaty on the Functioning of the European Union, the United Kingdom and Ireland have notified their wish to participate in the adoption and application of this Directive] OR [without prejudice of Article 4 of Protocol on the position of the United Kingdom and Ireland in respect of the Area of Freedom, Security and Justice, annexed to the Treaty on European Union and to the Treaty on the Functioning of the European Union, the United Kingdom and Ireland will not participate in the adoption of this Directive and will not be bound by or be subject to its application]¹⁸</p>	<p>(30) In accordance with Articles 1, 2, 3 and 4 of Protocol on the position of the United Kingdom and Ireland in respect of the Area of Freedom, Security and Justice, annexed to the Treaty on European Union and to the Treaty on the Functioning of the European Union, the United Kingdom and Ireland have notified their wish to participate in the adoption and application of this Directive.</p>		

¹⁸ The final wording of this recital in the Directive will depend on the actual position of the United Kingdom and Ireland taken in accordance with the provisions of protocol (No 21).

COMMISSION PROPOSAL (DOC. NO. 12564/10)	COUNCIL GENERAL APPROACH (DOC. NO. 17503/10)	LIBE DRAFT AMENDMENTS	DRAFT COUNCIL POSITION
<p>(31) In accordance with Articles 1 and 2 of Protocol on the position of Denmark, annexed to the Treaty on European Union and to the Treaty on the Functioning of the European Union, Denmark is not taking part in the adoption of this Directive, and is therefore not bound by it or subject to its application,</p>	<p>(31) In accordance with Articles 1 and 2 of Protocol on the position of Denmark, annexed to the Treaty on European Union and to the Treaty on the Functioning of the European Union, Denmark is not taking part in the adoption of this Directive, and is therefore not bound by it or subject to its application,</p>		
		<p><i>(31 a) This Directive should be evaluated in the light of the practical experience gained. If appropriate, it should be amended so as to improve the safeguards which it lays down,</i></p> <p>[AMENDMENT 14]</p>	

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Articles

Article 1

1. (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.	1. (Objective) The Directive lays down rules concerning the right (...) to information about <i>procedural</i> rights in criminal proceedings <i>and proceedings for the execution of a European arrest warrant</i> and about the charge in criminal proceeding (...).	1. (Objective) The Directive lays down rules concerning the right of suspected and accused persons to information about their rights and about the <i>accusation</i> against them. [AMENDMENT 15§1]	Council invites EP to accept the following compromise wording: "The Directive lays down rules concerning the right to information about (...) rights in criminal proceedings and <i>in</i> proceedings for the execution of a European arrest warrant and about the charge in criminal proceedings."
		(2) <i>The Directive applies to suspected and accused persons on Union territory regardless of their legal status, citizenship or nationality.</i> [AMENDMENT 15 §2]	Council reiterates its suggestion not to maintain this amendment.

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Article 2

<p>(2. Scope)</p> <p>- 1. This Directive applies from the time 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, which is understood to mean the final determination of the question whether the suspected or accused person has committed the offence, including, where applicable, sentencing and the resolution of any appeal</p>	<p>(2. Scope)</p> <p>- 1. This Directive applies from the time a person is made aware by the competent authorities of a Member State, by official notification or otherwise, as established by national law, that he is suspected or accused of having committed a criminal offence until the conclusion of the proceedings, which is understood to mean the final determination of the question whether the suspected or accused person has committed the offence, including, where applicable, sentencing and the resolution of any appeal</p>	<p>(2. Scope)</p> <p>- 1. This Directive applies from the time a person is made aware by the competent authorities of a Member State, by official notification or otherwise, that he <i>or she</i> is suspected or accused of having committed a criminal offence until the conclusion of the proceedings, which is understood to mean the final determination of the question whether the suspected or accused person has committed the offence, including, where applicable, sentencing and the resolution of any appeal.</p> <p>[AMENDMENT 16 §1]</p>	<p>Council invites EP to consider the following with respect to the differences between the Council general approach and AM 16 §1:</p> <p>- "as established by national law", Council reiterates its invitation to EP to consider keeping this reference.</p> <p>- "or she": as agreed during the first trilogue the issue of gender neutrality will be dealt with horizontally throughout the instrument during the revision of the text by lawyer linguists.</p>
<p>2. This Directive applies to proceedings for the execution of a European Arrest Warrant.</p>	<p>2. (...)</p> <p><i>(See current Article 1)</i></p>	<p>NOT AMENDED</p>	<p>This reference has been moved to Article 1 of the Council general approach.</p>

COMMISSION PROPOSAL (DOC. NO. 12564/10)	COUNCIL GENERAL APPROACH (DOC. NO. 17503/10)	LIBE DRAFT AMENDMENTS	DRAFT COUNCIL POSITION
		<p><i>2a. For the purposes of this directive, the term ‘child’ shall mean any person under the age of 18.</i></p> <p>[AMENDMENT 16 §2a]</p>	<p>As already stated in the course of the first trilogue, Council proposes to remove all references to vulnerable persons and children from the operative part, as agreed in the Council general approach.</p> <p>See also AMENDMENT 17 §1a.</p>
	<p><i>3. 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.</i></p>	<p><i>2b. 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.</i></p> <p>[AMENDMENT 16 §2b]</p>	<p>In conformity with Council general approach.</p>

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Article 3

<p>(3. The right to information about rights) - 1. Member States shall ensure that any person who is suspected or accused of having committed a criminal offence is provided promptly with information on his procedural rights in simple and accessible language.</p> <p>2. The information referred to in paragraph 1 shall include as a minimum:</p>	<p>(3. The right to information about rights) - 1. Member States shall ensure that any person who is suspected or accused of having committed a criminal offence is provided with information concerning at least the following procedural rights as they apply under their national law:</p>	<p>(3. The right to information about rights) - 1. Member States shall ensure that any person who is suspected or accused of having committed a criminal offence is provided promptly at the point when those rights become applicable and in any event upon questioning by law enforcement authorities with information on his procedural rights in simple and accessible language. The information on these rights shall be provided orally or in writing and in due time to allow their effective exercise.</p> <p>2. The information referred to in paragraph 1 shall include as a minimum:</p> <p>[AMENDMENT 17 §1 and 2]</p>	<p>In consideration of the outcome of the first trilogue, Council invites EP to accept the following compromise solution for the first part of Article 3 (1):</p> <p>"Member States shall ensure that any person who is suspected or accused of having committed a criminal offence is provided with information concerning at least the following procedural rights as they apply under their national law, at the point when those rights become applicable and in due time to allow their effective exercise:"</p> <p>If accepted, this would entail the deletion of the current para. 1a of the Council general approach.</p> <p>As for the words: "The information on these rights shall be provided orally or in writing", Council proposes to accept this wording but would include it in para. 2. The compromise proposal would read as follows: "The information shall be provided either orally or in writing and in simple and accessible language."</p>
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COMMISSION PROPOSAL (DOC. NO. 12564/10)	COUNCIL GENERAL APPROACH (DOC. NO. 17503/10)	LIBE DRAFT AMENDMENTS	DRAFT COUNCIL POSITION
- the right of access to a lawyer, where necessary free of charge,	- the right of access to a lawyer;	– <i>any entitlement to legal advice,</i>	Council reiterates its invitation to EP to consider maintaining the wording in the Council general approach.
	- <i>any entitlement to legal advice free of charge and the conditions for obtaining it;</i>	– <i>the conditions for obtaining it free of charge,</i> [AMENDMENT 17 §2]	
- the right to be informed of the charge and, where appropriate, to be given access to the case-file,	(...)	– the right to be informed of the <i>accusation,</i> [AMENDMENT 17 §2]	For the sake of the logical structure of the text, Council insists on its suggestion to consider keeping the text of the general approach where the right to be informed of the accusation is dealt with in article 6.
- the right to interpretation and translation,	- the right to interpretation and translation;	– <i>the right to interpretation and translation,</i> [AMENDMENT 17 §2]	In conformity with Council general approach.
- the right to be brought promptly before a court if the suspected or accused person is arrested.	(...)	(...)	In conformity with Council general approach.
	- <i>the right to remain silent.</i>	– <i>the right to remain silent, and any implications there may be in exercising that right under national law.</i> [AMENDMENT 17 §2]	Council agrees on the underlying idea of this amendment but invites EP to consider keeping the wording of the general approach, also in relation to the general reference to the application of the rights according to national law in paragraph 1.

COMMISSION PROPOSAL (DOC. NO. 12564/10)	COUNCIL GENERAL APPROACH (DOC. NO. 17503/10)	LIBE DRAFT AMENDMENTS	DRAFT COUNCIL POSITION
	<i>1a. The information referred to in paragraph 1 shall be provided when these rights become applicable in the course of the proceedings and in due time to allow their effective exercise.</i>	NOT AMENDED	Council invites EP to consider keeping this paragraph for the reasons mentioned under Paragraph 1
		<i>1b. Member States shall ensure that, where the suspected or accused person does not speak or understand the language of the proceedings, he/she receives the information to be provided under this Directive in a language which he /she understands. Member States shall ensure that a mechanism is in place to convey the information to a suspected or accused person who is partially sighted or blind or cannot read.</i> [AMENDMENT 17 §1b]	Council reiterates its invitation not to maintain this amendment, since measures concerning vulnerable persons will be dealt with specifically under measure "E" of the Roadmap.
<i>(See Paragraph 1 of Article 3 of the COM proposal)</i>	2. The information shall be provided in simple and accessible language.	<i>1a. The information to be provided under this Directive shall be delivered in a language that the suspected or accused person understands. In the case of a child, a disabled or illiterate person, information about the accusation shall be provided in a manner appropriate to his/her age, level of maturity and intellectual and emotional capabilities;</i> [AMENDMENT 17 §1a]	Council invites EP to consider the following compromise wording in consideration of amendment 17 § 1: "The information shall be provided <i>either orally or in writing and</i> in simple and accessible language."

COMMISSION PROPOSAL (DOC. NO. 12564/10)	COUNCIL GENERAL APPROACH (DOC. NO. 17503/10)	LIBE DRAFT AMENDMENTS	DRAFT COUNCIL POSITION
		<p><i>1c. Member States shall ensure that when information is provided to the suspected or accused person in accordance with this Directive, that fact will be duly recorded, in accordance with national legislation.</i></p> <p>[AMENDMENT 17 §1c]</p>	<p>As agreed during the first trilogue, the issue of verification will be dealt with under Article 8(1) of the Directive.</p>

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Article 4

<p>(4. The right to written information about rights on arrest)</p> <p>- 1. Where a person is arrested by the competent authorities of a Member State in the course of criminal proceedings, he shall be promptly provided with information about his procedural rights in writing (Letter of Rights). He shall be given an opportunity to read the Letter of Rights and be allowed to keep it in his possession throughout the time he is deprived of his liberty.</p>	<p>(4. The right to written information about rights on arrest)</p> <p>- 1. Member States shall ensure that a person <i>who</i> is arrested is provided promptly with a <i>written</i> Letter of Rights <i>containing information concerning at least the procedural rights referred to in Article 3(1) as they apply under national law, as well as information on national law on the maximum length of deprivation of liberty before being brought before a judicial authority after arrest.</i> He shall be given an opportunity to read the Letter of Rights and be allowed, <i>save for exceptional circumstances</i>, to keep it in his possession throughout the time he is deprived of his liberty.</p>	<p>(4. The right to written information about rights <i>in the event of deprivation of liberty</i>)</p> <p>1. Where a person is <i>deprived of liberty</i> by the authorities of a Member State in the course of criminal proceedings, he/<i>she</i> shall <i>promptly</i> be provided with information about his procedural rights in writing (Letter of Rights). He/<i>she</i> shall be given an opportunity to read the Letter of Rights and be allowed to keep it in his/<i>her</i> possession throughout the time <i>during which</i> he/<i>she</i> is deprived of his/<i>her</i> liberty. <i>This provision shall apply to all cases where persons are deprived of liberty by public authorities, including upon questioning at a police station.</i></p> <p>[AMENDMENT 18 §1]</p>	<p>With respect to the use of the words "<i>deprivation of liberty</i>" instead of "<i>arrest</i>", Council invites EP to consider keeping the reference to arrest since the proposed amendment goes beyond the scope and the legal basis of the Directive, which is limited to rights of the suspected or accused in criminal proceedings. Council also insists on maintaining the words "save for exceptional circumstances" in the last sentence of this paragraph.</p>
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COMMISSION PROPOSAL (DOC. NO. 12564/10)	COUNCIL GENERAL APPROACH (DOC. NO. 17503/10)	LIBE DRAFT AMENDMENTS	DRAFT COUNCIL POSITION
		<p><i>2 The information referred to in Paragraph 1 shall take the form of a Letter of Rights and contain at least the elements set out in this Directive.</i> Annex I to this Directive contains an indicative model of such a Letter.</p> <p>[AMENDMENT 18 §2]</p> <p><i>2a. In addition to the information to be given under Article 3, the person deprived of liberty shall be informed about the following:</i></p> <p><i>a) the right to access to the evidentiary material related to the case,</i></p> <p><i>b) the right to contact relatives, employers and consular authorities,</i></p> <p><i>c) the right to medical care,</i></p> <p><i>d) the right to bail.</i></p> <p><i>(e) for how many hours/days he/she may be deprived of liberty before being brought before a judicial authority;</i></p> <p><i>(f) how to challenge the arrest and how to obtain a review of his/her</i></p>	<p>This part of the amendment is covered by Paragraph 1 of Article 4 of the text of the general approach. Council agrees on including the principle of written information in a provision of the operative part of the draft Directive, so far as the indicative nature of the model of Letter of Rights provided in annex is clear.</p> <p>Concerning indent b), Council would like to invite EP to consider the following compromise wording:</p> <p><i>"b) the right to have consular authorities informed"</i></p> <p>As far as the other indents are concerned (save for e), which is already part of the Council general approach) Council reiterates its invitation to EP not to maintain these amendments. It further invites EP to consider inserting the words <i>"as they apply under national law"</i>, as in the general approach, in conformity with the wording of Article 3.</p>

COMMISSION PROPOSAL (DOC. NO. 12564/10)	COUNCIL GENERAL APPROACH (DOC. NO. 17503/10)	LIBE DRAFT AMENDMENTS	DRAFT COUNCIL POSITION
		<p><i>detention, including the time limits for doing so provided under national law;</i></p> <p><i>(g) the maximum period of pre-trial detention applicable to his/her case;</i></p> <p>[AMENDMENT 18 §2a]</p>	

COMMISSION PROPOSAL (DOC. NO. 12564/10)	COUNCIL GENERAL APPROACH (DOC. NO. 17503/10)	LIBE DRAFT AMENDMENTS	DRAFT COUNCIL POSITION
2. The Letter of Rights shall be drafted in simple language and shall include at least that information referred to in Article 3(2). Annex I to this Directive contains an indicative model of such a Letter	2. The Letter of Rights shall be drafted in simple <i>and accessible</i> language (...). Annex I to this Directive contains an indicative model of such a Letter. ¹⁹	NOT AMENDED	Council insists on its suggestion to consider keeping the text of the general approach.
3. Member States shall ensure that, where the suspected or accused person does not speak or understand the language of the proceedings, he receives the Letter of Rights in a language he understands. Member States shall ensure that a mechanism is in place to convey the information to a suspected or accused person who is partially sighted or cannot read. Where the suspected or accused person is a child, the information contained in the Letter of Rights shall also be provided orally in a manner adapted to the child's age, level of maturity and intellectual and emotional capacities.	3. Member States shall ensure that the suspected or accused person (...) receives the Letter of Rights <i>written</i> in a language he understands. (...)	<i>3. deleted (covered by AMD 17 §1a on Article 3)</i> [AMENDMENT 18 §3]	

¹⁹ The status and content of such model, including the question of whether it should be contained in an Annex to the present Directive, was discussed at the DROIPEN meeting on 27 January 2011 and at CATS level on 11 February 2011. Delegations are strongly in favour of the indicative and non-compulsory nature of the Annex.

COMMISSION PROPOSAL (DOC. NO. 12564/10)	COUNCIL GENERAL APPROACH (DOC. NO. 17503/10)	LIBE DRAFT AMENDMENTS	DRAFT COUNCIL POSITION
<p>4. Where a Letter of Rights is not available in the appropriate language, the suspected or accused person shall be informed of his rights orally in a language he understands. A Letter of Rights in a language he understands shall then be given to him without undue delay.</p>	<p>Where a Letter of Rights is not available in the appropriate language, the suspected or accused person shall be informed of his rights orally in a language he understands. A Letter of Rights in a language he understands shall then be given to him without undue delay.</p>	<p>4 <i>In exceptional cases, including</i> where a Letter of Rights is not available in the appropriate language, the suspected or accused person shall be informed of his rights orally in a language which he/<i>she</i> understands. A Letter of Rights in a language which he/<i>she</i> understands shall then be given to him/her without undue delay.</p> <p>[AMENDMENT 18 §4]</p>	<p>Council insists on its suggestion to consider keeping the text of the general approach.</p>
		<p>5. <i>Member States shall ensure the right to interpretation and translation under Directive 2010/64/EU and shall ensure that all translations and interpretation provided meet the quality requirements defined in the same Directive.</i></p> <p>[AMENDMENT 18 §5]</p>	<p>Council invites EP to consider avoiding the insertion of this Paragraph.</p> <p>As a general principle, Council suggests to avoid provisions belonging to the other measures of the Roadmap given that repetition does not serve the purpose of legal clarity and better regulation.</p>

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Article 5

<p>(5. The right to written information about rights in European Arrest Warrant proceedings) Member States shall ensure that any person subject to proceedings for the execution of a European Arrest Warrant receives an appropriate Letter of Rights setting out the rights of that person as laid down in the Framework Decision 2002/584/JHA.. Annex II to this Directive contains an indicative model of such Letter.</p>	<p>(5. The right to written information about rights in European Arrest Warrant proceedings) Member States shall ensure that any person <i>who is arrested for the purpose of</i> the execution of a European Arrest Warrant receives <i>promptly</i> an appropriate Letter of Rights <i>containing information on national law concerning at least</i> the rights of that person as laid down in <i>Articles 11, 13 (2) and 14 of</i> the Framework Decision 2002/584/JHA. <i>[Annex II to this Directive contains an indicative model of such Letter].</i>²⁰</p>	<p>(5. The right to written information about rights in European Arrest Warrant proceedings) Member States shall ensure that any person subject to proceedings for the execution of a European Arrest Warrant receives an appropriate Letter of Rights setting out the rights of that person as laid down in the Framework Decision 2002/584/JHA. Annex II to this Directive contains an indicative model of such Letter. <i>The Letter of Rights shall be drafted in simple language.</i> [AMENDMENT 19]</p>	<p>In consideration of the outcome of the first trilogue, Council would invite EP to consider the following compromise wording:</p> <p>"Member States shall ensure that any person <i>who is arrested for the purpose of</i> the execution of a European Arrest Warrant receives <i>promptly</i> an appropriate Letter of Rights <i>containing information on national law concerning at least</i> the rights of that person as laid down in Articles 11, 13 (2), 14 <i>and 19 of</i> the Framework Decision 2002/584/JHA. <i>[Annex II to this Directive contains an indicative model of such Letter].</i> The Letter of Rights shall be drafted in simple <i>and accessible</i> language."</p>
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²⁰ See footnote under Article 4(2).

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Article 6

(6. The right to information about the charge)	(6. The right to information about the <i>accusation</i>)	(6. <i>The right to information about the accusation</i>)	In conformity with the Council general approach.
	<i>1. Member States shall ensure that a person who is arrested is informed of the reasons for his arrest, including the criminal act he is suspected of having committed.</i>	<i>1b. Member States shall ensure that as soon as a person is deprived of his/her liberty, he/she is provided with information about the reasons for his/her detention, including information about the offence which he/she is suspected of having committed, in accordance with Article 4 of this Directive.</i> [AMENDMENT 20 §1b]	On the reference to the "deprivation of liberty", see comment on Paragraph 1 of Article 4. Council invites EP to consider avoiding the inclusion of the words " <i>in accordance with Article 4 of this Directive</i> ", as there is no such obligation in Article 4, therefore the reference is unclear and against the principle of legal security.
	<i>1a. Member States shall ensure that a person who is officially interviewed as a suspect or accused by the police or another competent authority in the course of a criminal proceeding is informed of the criminal act he is suspected of having committed.</i>	NOT AMENDED	Council invites EP to consider keeping the text of the general approach.

COMMISSION PROPOSAL (DOC. NO. 12564/10)	COUNCIL GENERAL APPROACH (DOC. NO. 17503/10)	LIBE DRAFT AMENDMENTS	DRAFT COUNCIL POSITION
<p>1. Member States shall ensure that a suspected or accused person is provided with sufficient information about the charge to safeguard the fairness of the criminal proceedings.</p>	<p>2. Member States shall ensure that a person <i>who is subject to a criminal charge</i> is provided <i>promptly</i> with sufficient information <i>on the nature and cause of the accusation</i> to safeguard the fairness of the criminal proceedings <i>and effectively exercise his right of defence.</i> (...)</p>	<p>1. Member States shall ensure that a suspected or accused person is <i>promptly</i> provided with sufficient information about the accusation to safeguard the fairness of the criminal proceedings <i>and effectively exercise his/her defence rights.</i></p> <p><i>1a. Member States shall ensure that a person who has been charged with a criminal offence is provided with sufficient information on the nature and cause of the accusation as soon as according to national law he/she is entitled to take the first steps in his/her defence.</i></p> <p>[AMENDMENT 20 §1 and 1a]</p>	<p>Council invites EP to consider keeping the text of the general approach.</p>
<p>2. The information required pursuant to paragraph 1 shall be delivered promptly and in detail and in a language that the suspected or accused person understands. In the case of a child, information about the charges shall be provided in a manner adapted to his age, level of maturity and intellectual and emotional capacities.</p>		<p><i>2. deleted (last part covered by AM 17 §1a on Article 3)</i></p> <p>[AMENDMENT 20 §2]</p>	

COMMISSION PROPOSAL (DOC. NO. 12564/10)	COUNCIL GENERAL APPROACH (DOC. NO. 17503/10)	LIBE DRAFT AMENDMENTS	DRAFT COUNCIL POSITION
3. The information to be given shall include:	3. The information <i>referred to in paragraph 2</i> shall <i>be provided</i> in detail <i>at the latest upon submission of the merits of the accusation to the judgement of a court and</i> shall include:	3. The duty to provide the information according to this provision shall continue throughout the proceedings and include at least: [AMENDMENT 20 §3]	Council invites EP to consider keeping the text of the general approach.
(a) a description of the circumstances in which the offence was committed, including the time, place and degree of participation in the offence by the suspected or accused person and	(a) a description of the <i>acts the accused is alleged to have committed</i> , including time <i>and</i> place (...) and	(a) a description of the circumstances in which the offence <i>is alleged to have been</i> committed, including the time, place and <i>nature</i> of <i>the</i> participation in the offence by the suspected or accused person and [AMENDMENT 20 §3 (a)]	Council suggests keeping the text of the Council general approach, which corresponds in its substance to the EP amendment, as the “participation in the offence” is covered under (b), where it fits logically. The degree of participation is part of legal classification.
(b) the nature and legal classification of the offence.	(b) the nature of the offence, <i>including</i> its legal classification.	(b) the nature and legal classification of the offence <i>and any change thereof</i> [AMENDMENT 20 §3 (b)]	Council invites EP to consider maintaining the text of the general approach.

COMMISSION PROPOSAL (DOC. NO. 12564/10)	COUNCIL GENERAL APPROACH (DOC. NO. 17503/10)	LIBE DRAFT AMENDMENTS	DRAFT COUNCIL POSITION
Article 7			
(7. The right to access to the case-file)	(7. The right to access to the <i>materials of the case</i>)	(7. The right to access to the <i>evidentiary material related to the case</i>)	Council invites EP to consider keeping the text of the general approach, which is broader than the one proposed in the amendment.
- 1. Where a suspected or accused person is arrested at any stage of the criminal proceedings, Member States shall ensure that he or his lawyer is granted access to those documents contained in the case-file which are relevant for the determination of the lawfulness of the arrest or detention.	- 1. Where a (...) person is arrested <i>and detained</i> at any stage of the criminal proceedings, Member States shall ensure that <i>all information related to the specific case in the possession of the competent authorities and which is essential to effectively challenge according to national law the lawfulness of the arrest or detention, is made available</i> to the arrested person or his lawyer.	- 1. Where a suspected or accused person is arrested at any stage of the criminal proceedings, Member States shall ensure that <i>evidentiary material for and against the suspected or accused person in the possession of the competent authorities</i> , which <i>is</i> relevant for the determination of the lawfulness of the arrest or detention, <i>is made available to the arrested person or his lawyer.</i> [AMENDMENT 21 §1]	Council invites EP to consider keeping the text of the general approach, since the structure of the article as it stands allows to combine civil and common law systems.
2. Member States shall ensure that an accused person or his lawyer is granted access to the case-file once the investigation of the criminal offence is concluded.	2. Member States shall ensure that access is granted at least to <i>all material evidence in the possession of the competent authorities for or against the suspected or accused person to that person or his lawyer to safeguard the fairness of the proceedings and to prepare the defence.</i>	2. Member States shall ensure that an accused person or his lawyer is granted access to <i>all the evidentiary material related to the case</i> once the investigation of the criminal offence is concluded. [AMENDMENT 21 §2 first part]	Council invites EP to consider keeping the text of the general approach with regards to the extent of the right of access. As for the moment when the access must be granted, see under Paragraph 3 below.

COMMISSION PROPOSAL (DOC. NO. 12564/10)	COUNCIL GENERAL APPROACH (DOC. NO. 17503/10)	LIBE DRAFT AMENDMENTS	DRAFT COUNCIL POSITION
<p>Access to certain documents contained in the case-file may be refused by a competent judicial authority where access to these 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 take place. Where it is in the interests of justice, the accused person or his lawyer may request an index of the documents contained in the case-file.</p>	<p><i>(See Paragraph 4 below.)</i></p>		
<p>3. Access to the case-file shall be provided in good time to allow the suspected or accused person to prepare his defence or challenge pre-trial decisions.</p>	<p>3. <i>Without prejudice to paragraph 1, access to the materials referred to in paragraph 2 shall be granted in due time to allow the effective exercise of the right of defence and at the latest upon submission of the merits of the accusation to the judgement of a court. Where further material evidence comes into the possession of the competent authorities, access shall be granted to it in due time to allow for it to be considered.</i></p>	<p>3. Access to the <i>evidentiary material related to the case in the possession of the competent authorities</i> shall be provided in good time to allow the suspected or accused person to prepare his defence or challenge pre-trial decisions.</p> <p>[AMENDMENT 21 §3 first part]</p>	<p>Council invites EP to consider keeping the text of the general approach.</p>

COMMISSION PROPOSAL (DOC. NO. 12564/10)	COUNCIL GENERAL APPROACH (DOC. NO. 17503/10)	LIBE DRAFT AMENDMENTS	DRAFT COUNCIL POSITION
<p>Access to certain documents contained in the case-file may be refused by a competent judicial authority where access to these 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 take place. Where it is in the interests of justice, the accused person or his lawyer may request an index of the documents.</p>	<p>4. <i>As an exception to paragraphs 2 and 3, provided that this does not prejudice the right to a fair trial, access to certain materials may be refused (...) if it may lead to serious risk for the 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 jeopardizing an ongoing investigation, or where it may seriously harm the national security of the Member State in which the proceedings take place.(...)</i></p>	<p>4. Access to certain documents (contained in the case-file) may <i>exceptionally</i> be refused <i>on the basis of a reasoned decision by a</i> competent judicial authority where access to these documents may lead to serious risk to the life <i>or fundamental rights</i> of another person or may seriously harm the internal security of the Member State in which the proceedings take place. <i>These limitations should be interpreted strictly and in accordance with the principle of the right to a fair trial as provided for by the ECHR and interpreted by case-law of the European Court of Human Rights.</i> Where it is in the interests of justice, the accused person or his lawyer may request an index of <i>evidentiary material related to the case.</i></p> <p>[AMENDMENT 21 §2 second part]</p>	<p>Council invites EP to consider the following with respect to the differences between the general approach and AM 21 §2 second part:</p> <ul style="list-style-type: none"> - "<i>exceptionally</i>": No substantial difference if it is clarified that the exception should not apply to Paragraph 1. - "<i>reasoned decision by a</i> competent judicial authority": Council invites EP to consider maintaining the text of the general approach. - "to the life <i>or fundamental rights</i>" Council is willing to accept this addition. - "<i>These limitations ... Human Rights</i>": Council invites EP to consider keeping this sentence in a recital (see recital 21b of the text of the general approach). <p>As regards other differences, Council strongly advises EP to consider maintaining the reference to "<i>important public interest</i>", since this wording comes directly from the ECHR case-law.</p>

COMMISSION PROPOSAL (DOC. NO. 12564/10)	COUNCIL GENERAL APPROACH (DOC. NO. 17503/10)	LIBE DRAFT AMENDMENTS	DRAFT COUNCIL POSITION
		<p><i>2a. Member States shall ensure that the limitations on the right of access to the evidentiary material related to the case laid down in paragraph 2 do not in any way prejudice the accused persons' effective exercise of the right of defence.</i></p> <p>[AMENDMENT 21 §2a]</p>	<p>Council invites EP to consider that this concern is already covered by Paragraph 4, first sentence of the text of the general approach ("<i>provided that this does not prejudice the right to a fair trial</i>").</p>
		<p><i>2b. Member States shall ensure that an effective remedy exists before an impartial tribunal to challenge the decision not to allow access to certain evidentiary material related to the case.</i></p> <p>[AMENDMENT 21 §2b]</p>	<p>Council invites EP to consider the fact that this concern is already covered by article 8.2 of the draft Directive.</p>
<p>It shall be provided free of charge.</p>	<p><i>5. The information or access referred to in this Article shall be provided free of charge.</i></p>	<p>It shall be provided free of charge.</p> <p>[AMENDMENT 21 §3 second part]</p>	<p>Council invites EP to consider keeping the text of the general approach.</p>

COMMISSION PROPOSAL (DOC. NO. 12564/10)	COUNCIL GENERAL APPROACH (DOC. NO. 17503/10)	LIBE DRAFT AMENDMENTS	DRAFT COUNCIL POSITION
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Article 8

<p>(8. Verification and remedies) - 1. Member States shall ensure that a procedure is in place to ascertain whether a suspected or accused person has received all information relevant to him in accordance with Articles 3 to 7.</p>	<p>(8. Verification and remedies) - 1. Member States shall ensure that <i>when information is provided to the suspected or accused person in accordance with Article 4(1), 5 and 6(1a) of this Directive, this will be noted, using the recording procedure in accordance with the law of the Member State concerned.</i></p>	<p>(8. Verification and remedies) - 1. Member States shall ensure that a procedure is in place to ascertain whether a suspected or accused person has received all information relevant to him/her in accordance with <i>this Directive.</i></p> <p>[AMENDMENT 22 §1]</p>	<p>Council invites EP to consider keeping the text of the general approach.</p>
<p>2. Member States shall ensure that a suspected or accused person has an effective remedy in instances where he does not receive this information.</p>	<p>2. Member States shall ensure that a suspected or accused person <i>or his lawyer has the right to challenge, in accordance with procedures in national law, the possible failure or refusal of the competent authorities to provide the information in accordance with this Directive</i></p>	<p><i>Paragraph 2 deleted (covered by AM introducing Article 8 par 1a)</i></p> <p><i>1a. Member States shall ensure that a suspected or accused person has the right to challenge, in accordance with procedures in national law, the possible failure or refusal of the competent authorities to provide the information required to be provided under this Directive.</i></p> <p>[AMENDMENT 22 §1a]</p>	<p>The proposed amendment is in substance in conformity with general approach. However Council invites EP to consider inserting a reference to the lawyer of the suspected or accused person.</p>
<p>3. Where the notification of rights is made orally in accordance with Article 4(4), it shall be recorded in such a manner as to allow verification of the content of the notification</p>	<p>(...)</p>	<p>NOT AMENDED</p>	<p>Council invites EP to consider keeping the text of the general approach (see Paragraph 1).</p>

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Article 9

<p>(9. Training) Member States shall ensure that relevant officials in police and judicial authorities receive appropriate training in relation to the obligations laid down in Articles 3 to 8. Member States shall ensure in particular that relevant officials have sufficient knowledge of the rights of suspected and accused persons as referred to in Article 3 in order to safeguard appropriate transmission of information on these rights.</p>	<p>(9. Training) <i>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.(...)</i></p>	<p>(9. Training) <i>Without prejudice to judicial independence and differences in the organisation of the judiciary across the Union, Member States shall take concrete measures to ensure that relevant officials in police services, judicial staff involved in criminal proceedings, prosecutors and judges will</i> receive appropriate training in relation to the obligations laid down in Articles 3 to 8. Member States shall ensure in particular that relevant officials have sufficient knowledge of the rights of suspected and accused persons as referred to in Article 3 in order to safeguard appropriate transmission of information on these rights.</p> <p>[AMENDMENT 23]</p>	<p>Council advises EP to consider keeping the text of the general approach, since it is inspired by the wording of the corresponding provision in the Directive on the right to translation and interpretation in criminal proceedings.</p>
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Article 10

<p>(10. Non-regression clause)</p> <p>- 1. Nothing in this Directive shall be construed as limiting or derogating from any of the rights and procedural safeguards that may be ensured under the ECHR, under the ICCPR and under other relevant provisions of international law or under the laws of any Member States which provide a higher level of protection.</p>	<p>(10. Non-regression clause)</p> <p>- 1. Nothing in this Directive shall be construed as limiting or derogating from any of the rights and procedural safeguards that <i>are</i> ensured under the European Convention for the Protection of Human Rights and Fundamental Freedoms, (...) other relevant provisions of international law or the law of any Member States which provide a higher level of protection.</p>	<p>(10. Non-regression clause)</p> <p>- 1. Nothing in this Directive shall be construed as limiting or derogating from any of the rights and procedural safeguards that <i>are</i> ensured under the ECHR, <i>the Charter</i>, under the ICCPR and under other relevant provisions of international law or under the laws of any Member States which provide a higher level of protection.</p> <p>[AMENDMENT 24]</p>	<p>Council invites EP to consider keeping the text of the general approach.</p>
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Article 11

(11. Implementation) - 1. Member States shall adopt and publish the laws, regulations and administrative provisions necessary to comply with this Directive by ... ²¹ at the latest.	(11. <i>Transposition</i>) - 1. Member States shall <i>bring into force</i> the laws, regulations and administrative provisions necessary to comply with this Directive by... ²² (...).	NOT AMENDED	Council invites EP to consider keeping the text of the general approach.
		<i>1a. Member States shall supplement the information to be provided in accordance with Annex I and Annex II to this Directive with more specific information on how these rights apply in their national system.</i> [AMENDMENT 25 §1a first part]	Council would like to ask EP for clarification on the scope of this amendment and invites EP to consider not to retain it, since the content of the Letter of Rights is already dealt with under Article 4.
		<i>This information shall be forwarded to the Commission by ... so it may be taken into account in the Commissions report in accordance with article 12 of this Directive.</i> [AMENDMENT 25 §1a second part]	Council invites EP to consider not to retain this amendment since this duty of communication is already covered by Paragraph 2.

²¹ 24 months after publication of this Directive in the *Official Journal*.

²² 24 months after publication of this Directive in the *Official Journal*.

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		<p><i>In implementing this Directive, Member States shall take care that the rights provided to suspects and accused persons are effectively granted. Member States are not called to amend already existing Letter of rights when these Letter of rights, despite different in the presentation, already provide for the elements required by this Directive.</i></p> <p>[AMENDMENT 25 §1a third part]</p>	Council invites EP to consider not to retain this amendment since it goes outside the scope of this Directive.
2. They shall communicate the text of those provisions and a correlation table between those provisions and this Directive to the Commission.	2. Member States shall <i>transmit</i> the text of those <i>measures (...)</i> to the Commission.	NOT AMENDED	Council invites EP to consider keeping the text of the general approach.
3. When Member States adopt these provisions they shall contain a reference to this Directive or be accompanied by such a reference on the occasion of their official publication. Member States shall determine how such reference is to be made.	3. When Member States adopt those measures they shall contain a reference to this Directive or be accompanied by such a reference on the occasion of their official publication. <i>The methods of making such reference shall be laid down by the Member States.</i>	NOT AMENDED	Council invites EP to consider keeping the text of the general approach.

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Article 12

<p>(12. Report) The Commission shall, by ...²³ 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.</p>	<p>(12. Report) The Commission shall, by ...²⁴ 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.</p>	<p>NOT AMENDED</p>	
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²³ 36 months after publication of this Directive in the *Official Journal*.

²⁴ 36 months after publication of this Directive in the *Official Journal*.

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Article 13

(13. Entry into force) This Directive shall enter into force on the twentieth day following that of its publication in the <i>Official Journal of the European Union</i> .	(13. Entry into force) This Directive shall enter into force on the twentieth day following its publication in the <i>Official Journal of the European Union</i> .	NOT AMENDED	
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Article 14

(14.) This Directive is addressed to the Member States.	(14. <i>Addressees</i>) This Directive is addressed to the Member States <i>in accordance with the Treaties</i> .	NOT AMENDED	Council invites EP to consider keeping the text of the general approach.
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