



**COUNCIL OF
THE EUROPEAN UNION**

Brussels, 19 December 2011

18410/11

**Interinstitutional File:
2010/0215 (COD)**

**CODEC 2383
DROIPEN 155
JUSTCIV 353
ENFOPOL 469
DATAPROTECT 153
SOC 1105
FREMP 114
PE 548**

NOTE

from: General Secretariat
to: Permanent Representatives Committee/Council
Subject: Proposal for a Directive of the European Parliament and of the Council on the right to information in criminal proceedings
- Outcome of the European Parliament's first reading
(Strasbourg, 12 to 15 December 2011)

I. INTRODUCTION

In accordance with the provisions of Article 294 of the TFEU and the joint declaration on practical arrangements for the codecision procedure¹, a number of informal contacts have taken place between the Council, the European Parliament and the Commission with a view to reaching an agreement on this dossier at first reading, thereby avoiding the need for second reading and conciliation.

¹ OJ C 145, 30.6.2007, p.5

In this context, the rapporteur, Birgit SIPPEL (S&D, DE) presented a single compromise amendment to the proposal for a Directive, on behalf of the Committee on Civil Liberties, Justice and Home Affairs. This amendment had been agreed during the informal contacts referred to above.

II. VOTE

When it voted on 13 December, the plenary adopted the single compromise amendment to the proposal for a Directive. The amendment adopted corresponds to what was agreed between the three institutions and ought therefore to be acceptable to the Council. Consequently, once the Legal/Linguistic Experts¹ have examined the text, the Council should be in a position to adopt the legislative act.

The text of the amendment adopted and the European Parliament's legislative resolution are set out in the Annex hereto. The amendment is presented in the form of a consolidated text where added wordings are highlighted in *bold and italics*, the symbol "■" indicates deleted text and the symbol "||" indicates changes of a linguistic or clerical nature.

¹ Delegations with legal-linguistic observations can send them to the secretariat of the Council's Directorate for the Quality of Legislation (secretariat.jl-codecision@consilium.europa.eu) until 9.1.2012, in order better to prepare the lawyer-linguists' meeting with national experts.

Right to information in criminal proceedings *I**

European Parliament legislative resolution of 13 December 2011 on the proposal for a directive of the European Parliament and of the Council on the right to information in criminal proceedings (COM(2010)0392 – C7-0189/2010 – 2010/0215(COD))

(Ordinary legislative procedure: first reading)

The European Parliament,

- having regard to the Commission proposal to Parliament and the Council (COM(2010)0392),
 - having regard to Article 294(2) and Article 82(2) of the Treaty on the Functioning of the European Union, pursuant to which the Commission submitted the proposal to Parliament (C7-0189/2010),
 - having regard to Article 294(3) of the Treaty on the Functioning of the European Union,
 - having regard to the contributions submitted by the Greek Parliament, the Spanish Congress of Deputies, the Italian Senate and the Portuguese Parliament on the draft legislative act,
 - having regard to the opinion of the European Economic and Social Committee of 8 December 2010¹,
 - after consulting the Committee of the Regions,
 - having regard to the undertaking given by the Council representative by letter of 16 November 2011 to approve Parliament's position, in accordance with Article 294(4) of the Treaty on the Functioning of the European Union,
 - having regard to Rule 55 of its Rules of Procedure,
 - having regard to the report of the Committee on Civil Liberties, Justice and Home Affairs and the opinion of the Committee on Legal Affairs (A7-0408/2011),
1. Adopts its position at first reading hereinafter set out;
 2. Calls on the Commission to refer the matter to Parliament again if it intends to amend its proposal substantially or replace it with another text;
 3. Instructs its President to forward its position to the Council, the Commission and the national parliaments.

¹ OJ C 54, 19.2.2011, p. 48.

Position of the European Parliament adopted at first reading on 13 December 2011 with a view to the adoption of Directive 2011/.../EU of the European Parliament and of the Council on the right to information in criminal proceedings

THE EUROPEAN PARLIAMENT AND THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty on the Functioning of the European Union, and in particular Article 82(2) thereof,

Having regard to the proposal from the European Commission,

After transmission of the draft legislative act to the national parliaments,

Having regard to the opinion of the European Economic and Social Committee¹,

After consulting the Committee of the Regions,

Acting in accordance with the ordinary legislative procedure²,

Whereas:

-
- (1) 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.
 - (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 matters³. 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".
 - (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.

¹ OJ C 54, 19.2.2011, p. 48.

² Position of the European Parliament of 13 December 2011.

³ OJ C 12, 15.1.2001, p. 10.

- (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.
- (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.*
- (6) *Article 6 of the Charter and Article 5 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 **■**, 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 *and from* the ECHR **■**.
- (9) Article 82(2) of the Treaty on the Functioning of the European Union 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.
- (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.
- (11) On 30 November 2009, the Council adopted the Roadmap for strengthening procedural rights of suspected or accused persons in criminal proceedings ("the Roadmap")¹. 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 *accusation*, 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.
- (12) **■** On 11 December 2009, the European Council welcomed the Roadmap and made it part of the Stockholm Programme (point 2.4.)². 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

¹ OJ C 295, 4.12.2009, p. 1.

² OJ C 115, 4.5.2010, p. 1.

whether other issues, for instance the presumption of innocence, need to be addressed, in order to promote better cooperation in this area.

- (13) The first measure on the Roadmap is Directive 2010/64/EU of the European Parliament and of the Council of 20 October 2010 on the right to interpretation and translation in criminal proceedings¹.
- (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 *accusation* 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 *builds on the rights laid down in 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 Programme², the Commission announced the presentation of a proposal on the right to information in 2010.
- (15) *This Directive should apply to suspected and accused persons regardless of their legal status, citizenship or nationality.*
- (16) *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.*
- (17) 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 this Directive. ■
- (18) The suspected or accused person should be ■ informed promptly *by the competent authorities of those rights, as they apply under national law, which are essential to safeguard the fairness of the proceedings*, be it orally or in writing *as provided for by* this Directive. *In order to allow a practical and effective exercise of these rights of the suspected or accused person, the information should be provided promptly in the course of the proceedings and at the latest before the first official interview of the suspected or the accused person by the police or another competent authority.*
- (19) *This Directive lays down minimum rules with respect to the information on rights of the suspected or accused person. This is without prejudice to information to be given on other procedural rights stemming from the Charter, the ECHR, national law and applicable EU legislation as interpreted by the relevant courts and tribunals. Once the information about a particular right has been provided, it is understood that the*

¹ OJ L 280, 26.10.2010, p. 1.

² COM(2010)0171, 20.4.2010.

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.

- (20) *Where this Directive confers rights on suspected and accused persons who are arrested or detained, this should be understood as any situation where, in the course of criminal proceedings, the person is deprived of his liberty within the meaning of Article 5(1)(c) ECHR as interpreted by the case-law of the European Court of Human Rights.*
- (21) Where a suspected or accused person is arrested *or detained*, 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. *Such a Letter of Rights should be provided promptly to each arrested person when he is deprived of liberty by the intervention of law enforcement authorities in the context of criminal proceedings. It should include basic information concerning any possibility to challenge the lawfulness of the arrest, to obtain a review of the detention, or to ask for provisional release, where, and to the extent that, such a right exists in national law.* 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 this Directive. This model is indicative and may be subject to review in the context of the report on implementation to be presented by the Commission pursuant to Article 12 of this 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.
- (22) *The specific conditions and rules for informing one other person about the arrest or detention are to be determined by the Member States in their national law, it being understood, as set out in the Roadmap, that the exercise of this right should not prejudice the due course of the criminal proceedings.*
- (23) *This Directive is without prejudice to the provisions of national law concerning safety of persons remaining in detention facilities.*
- (24) *Member States should ensure that, when providing information in accordance with this Directive, the suspected or accused person should be provided, where necessary, with translation and interpretation in a language he understands, in accordance with the standards set out in Directive 2010/64/EU.*
- (25) *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.*
- (26) A person accused of having committed a criminal offence should be given all the information on the *accusation* necessary to enable him to prepare his defence and to safeguard the fairness of the proceedings. *Article 6(1) ECHR employs the term "charge". In this Directive, for reasons of consistency of the text, the term "accusation" is used throughout the text to describe the same concept.*
- (27) *The information to the suspected or accused person about the criminal act he is suspected of having committed should be given promptly, and at the latest before the first official interview of the suspected or the accused person by the police or another competent authority, and without prejudicing the course of ongoing investigations. A*

description of the facts the person is suspected or accused of having committed including, where known, the time and place, as well as the possible legal classification of the alleged offence should be given in enough detail, in relation to the phase of the proceedings when it is given to safeguard the fairness of the proceedings and allow for an effective exercise of the right of defence.

- (28) *When in the course of the criminal proceedings the details of the accusation change to the extent that the position of the suspected or accused person is substantially affected, this should be communicated to him when necessary to safeguard the fairness of the proceedings and in due time to allow for an effective exercise of the right of defence.*
- (29) *Documents and, where appropriate, photographs, audio and video recordings, which in accordance with national law are essential to effectively challenge the lawfulness of an arrest or detention of the suspected or accused person, should be made available to him or to his lawyer at the latest before the moment when a competent judicial authority will be called to decide upon the lawfulness of the arrest or detention in accordance with Article 5(4) ECHR, and in due time to allow the effective exercise of the right to challenge the lawfulness of arrest or detention.*
- (30) *For the purpose of this Directive, 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, should include access to materials such as documents, and where appropriate photographs, audio and video recordings. Such information may be contained in a case file or otherwise held by competent authorities in any appropriate way in accordance with national law.*
- (31) *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 right 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.*
- (32) *The right to access to the materials of the case should be without prejudice to the provisions of national law concerning the protection of personal data and whereabouts of protected witnesses.*
- (33) *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.*
- (34) *The provision of information in accordance with this Directive should be noted in accordance with existing recording procedures under the national law of the Member States, without any additional obligation to introduce new mechanisms or additional administrative burden.*
- (35) *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 or to disclose certain materials of the*

case 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 or refusal may be challenged.

- (36) *Without prejudice to judicial independence and differences in the organisation of the judiciary across the Union, Member States should provide or encourage the provision of adequate training with respect to the objectives of this Directive to the relevant officials in Member States.*
- (37) *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.*
- (38) The *right to be informed about* rights *on arrest* provided for in this Directive should also apply, mutatis mutandis, to *persons arrested* for the *purpose of the* execution of a European Arrest Warrant according to the Council Framework Decision 2002/584/JHA of 13 June 2002 on the European Arrest Warrant and the surrender procedures between Member States¹. 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 this 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 this Directive and also once all the Roadmap measures have come into force.
- (39) 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.
- (40) 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 ■ and the right of defence ■. It has to be implemented accordingly.
- (41) 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.
- (42) Since the aim of achieving common minimum standards cannot be achieved by Member States acting unilaterally, 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.
- (43) ■ In accordance with Articles 1 to 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

¹ OJ L 190, 18.7.2002, p.1.

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 ■ .

- (44) 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,

HAVE ADOPTED THIS DIRECTIVE:

Article 1 Objective

The Directive lays down rules concerning the right ■ to information *of suspected or accused persons* about ■ rights ■ in criminal proceedings *and rights of persons in proceedings for the execution of a European arrest warrant and about the accusation in criminal proceedings.*

Article 2 Scope

1. This Directive applies from the time a person is made aware by the competent authorities of a Member State ■ , 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.
2. *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.*

Article 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 *concerning at least the following* procedural rights *as they apply under their national law, in order to allow for their effective exercise*:
 - the right of access to a lawyer ■ ;
 - *any entitlement to legal advice free of charge and the conditions for obtaining it;*

- the right to be informed of the *accusation, in accordance with Article 6*;
 - the right to interpretation and translation;
 - the right to *remain silent*.
2. *The information shall be provided either orally or in writing and in simple and accessible language, taking into account any particular need of vulnerable suspected or accused persons.*

Article 4

The right to written information about rights on arrest

1. *Member States shall ensure that a person who is arrested or detained is provided promptly with a written 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.
2. *In addition to the information to be given under Article 3, the Letter of Rights referred to in paragraph 1 shall contain information about the following rights as they apply under national law:*
- *the right to access to the materials of the case;*
 - *the right to have consular authorities and one person informed;*
 - *the right of access to urgent medical assistance;*
 - *for how many hours/days he may be deprived of liberty before being brought before a judicial authority.*

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

3. The Letter of Rights shall be drafted in simple *and accessible* language █. Annex I to this Directive contains an indicative model of such a Letter.
4. Member States shall ensure that █ the suspected or accused person █ receives the Letter of Rights *written* in a language he understands. █ 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.

Article 5

The right to written information about rights in European Arrest Warrant proceedings

Member States shall ensure that any person *who is arrested* for the *purpose of the execution* of a European Arrest Warrant receives *promptly* an appropriate Letter of Rights *containing information*

on his rights according to the national law implementing Framework Decision 2002/584/JHA in the executing Member State. Annex II to this Directive contains an indicative model of such Letter. The Letter of Rights shall be drafted in simple and accessible language.

Article 6

The right to information about the *accusation*

1. Member States shall ensure that a suspected or accused person is provided with information about the *criminal act he is suspected of having committed. This information shall be provided promptly and in such detail as is necessary* to safeguard the fairness of the criminal proceedings *and effectively exercise the person's right of defence.*
2. *Member States shall ensure that a person who is arrested or detained is informed of the reasons for his arrest or detention, including the criminal act he is suspected of having committed.*
3. *Member States shall ensure that, at the latest upon submission of the merits of the accusation to a court, detailed information is provided on the accusation, including the nature and legal classification of the offence, as well as the nature of participation by the accused person.*
4. *Member States shall ensure that a suspected or accused person is informed promptly of changes in the information given in accordance with this Article where this is necessary to safeguard the fairness of the proceedings.*

Article 7

The right to access to the *materials of the case*

1. Where a person is arrested *and detained* at any stage of the criminal proceedings, Member States shall ensure that documents *related to the specific case in the possession of the competent authorities which are essential to effectively challenge according to national law the lawfulness of the arrest or detention, are made available to the arrested person or his lawyer.*
2. Member States shall ensure that *access is granted at least to 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.*
3. *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.*
4. *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 to the life or fundamental rights of another person or if it is strictly necessary to safeguard an important public interest, such as in the cases where it risks prejudicing an ongoing investigation, or where it may seriously harm the national security of the Member State in which the proceedings take place. Member States shall ensure that, in accordance with procedures in national law, the*

decision not to disclose certain materials in accordance with this paragraph is taken by a judicial authority or is at least subject to judicial review.

5. *The access referred to in this Article shall be provided free of charge.*

Article 8 Verification and remedies

1. Member States shall ensure that *when information is provided to the suspected or accused person in accordance with Articles 3 to 6 of this Directive, this will be noted, using the recording procedure in accordance with the law of the Member State concerned.*

2. Member States shall ensure that a suspected or accused person *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.*

■

Article 9 Training

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

Article 10 Non-regression clause

Nothing in this Directive shall be construed as limiting or derogating from any of the rights and procedural safeguards that *are* ensured under the *Charter, the ECHR, and* other relevant provisions of international law or ■ the *law* of any Member States which provide a higher level of protection.

Article 11 *Transposition*

1. Member States shall *bring into force* the laws, regulations and administrative provisions necessary to comply with this Directive by ...*.

2. *Member States shall transmit* the text of those *measures* to the Commission.

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

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. *The methods of making* such reference *shall be laid down by the Member States*.

Article 12 Report

The Commission shall, by ...** 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.

Article 13 Entry into force

This Directive shall enter into force on the twentieth day following that of its publication in the Official Journal of the European Union.

Article 14 *Addressees*

This Directive is addressed to the Member States *in accordance with the Treaties*.

Done at █ ,

For the European Parliament
The President

For the Council
The President

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



Indicative model Letter of Rights **I** :

The sole purpose of this model is to present an illustration of a Letter of Rights with a view to helping the national authorities when preparing such Letter at national level. Member States are not bound to use this model. When preparing their Letter, they may amend this model to align it with their national applicable rules and add further useful information.¹

You have the following rights:

A. ASSISTANCE OF A LAWYER / ENTITLEMENT TO LEGAL AID

You have the right to speak confidentially to a lawyer. A lawyer is independent from the police. Ask the police if you need help to get in contact with a lawyer, the police shall help you. In certain cases the assistance may be free of charge. Ask the police for more information.

B. INFORMATION ABOUT THE ACCUSATION

You have the right to know why you have been arrested/detained and what you are suspected of having done.

C. INTERPRETATION AND TRANSLATION

If you do not speak or understand the language, you have the right to be assisted by an interpreter. This is free of charge. The interpreter may help you to talk to your lawyer and is required to keep the content of this communication confidential. You have the right to translation of at least the relevant passages of essential documents, including any order by a judge allowing your arrest or keeping you in custody, any charge or indictment and any judgment. You may in some circumstances be provided with an oral translation or summary.

D. RIGHT TO REMAIN SILENT

While questioned by the Police or judicial authorities, you are not obliged to answer questions about the alleged offence. Your lawyer can help you to decide on that.

E. ACCESS TO DOCUMENTS

When you are arrested, you (or your lawyer) have the right to access essential documents you need to challenge the arrest or detention. If your case goes to court you (or your lawyer) will have the right to access material evidence for or against you.

F. INFORMING SOMEONE ELSE ABOUT YOUR DETENTION / INFORMING YOUR CONSULATE OR EMBASSY

¹ *According to Article 4(1), the Letter of Rights shall be given upon arrest/detention. This however shall not prevent Member States from providing suspected or accused persons with written information in other situations during criminal proceedings.*

When you are arrested, tell the police if you want someone to be informed of the detention, for example a family member or your employer. In certain cases the right to inform other persons of your detention may be temporary limited. The police will be able to tell you.

If you are a foreigner, tell the police if you want your consular authority or embassy to be informed of the detention. Also tell the police if you want to contact an official of your consular authority or embassy.

G. URGENT MEDICAL ASSISTANCE

When you are arrested, you have the right to urgent medical assistance. Tell the police if you are in need of urgent medical care.

H. PERIOD OF DEPRIVATION OF LIBERTY

After your arrest you may be deprived of your liberty/detained for a maximum period of [fill in applicable number of hours/days]. At the end of this period you must either be released or be heard by a judge who will decide on your further detention. Ask your lawyer or the judge for information about possibilities to challenge the arrest, to review the detention or to ask for provisional release.



Indicative model Letter of Rights for persons arrested on the basis of a European Arrest Warrant:

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

You have been arrested on the basis of a European Arrest Warrant. You have the following rights.

A. INFORMATION ABOUT THE EUROPEAN ARREST WARRANT

You have the right to be informed about the content of the European Arrest Warrant on the basis of which you have been arrested.

B. ASSISTANCE OF A LAWYER

You have the right to speak confidentially to a lawyer. A lawyer is independent from the police. Ask the police if you need help to get in contact with a lawyer, the police shall help you. In certain cases the assistance may be free of charge. Ask the police for more information.

C. INTERPRETATION AND TRANSLATION

If you do not speak or understand the language, you have the right to be assisted by an interpreter. This is free of charge. The interpreter may help you to talk to your lawyer and is required to keep the content of this communication confidential. You have the right to a translation of the European Arrest Warrant in a language you understand. You may in some circumstances be provided with an oral translation or summary.

D. POSSIBILITY TO CONSENT

You may consent or not consent to being surrendered to the State seeking you. Your consent would speed up the proceedings. [Possible addition of certain Member States: It may be difficult or even impossible to change this decision at a later stage.] Ask the authorities or your lawyer for more information.

E. HEARING

If you do not consent to your surrender, you have the right to be heard by a judicial authority.