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REPORT

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))

Committee on Civil Liberties, Justice and Home Affairs

Rapporteur: Birgit Sippel

Symbols for procedures

- * Consultation procedure
- *** Consent procedure
- ***I Ordinary legislative procedure (first reading)
- ***II Ordinary legislative procedure (second reading)
- ***III Ordinary legislative procedure (third reading)

(The type of procedure depends on the legal basis proposed by the draft act.)

Amendments to a draft act

In amendments by Parliament, amendments to draft acts are highlighted in ***bold italics***. Highlighting in *normal italics* is an indication for the relevant departments showing parts of the draft act which may require correction when the final text is prepared – for instance, obvious errors or omissions in a language version. Suggested corrections of this kind are subject to the agreement of the departments concerned.

The heading for any amendment to an existing act that the draft act seeks to amend includes a third line identifying the existing act and a fourth line identifying the provision in that act that Parliament wishes to amend. Passages in an existing act that Parliament wishes to amend, but that the draft act has left unchanged, are highlighted in **bold**. Any deletions that Parliament wishes to make in such passages are indicated thus: [...].

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DRAFT EUROPEAN PARLIAMENT LEGISLATIVE RESOLUTION

**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 ... 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.

Amendment 1

AMENDMENTS BY THE EUROPEAN PARLIAMENT*

to the Commission proposal

DIRECTIVE 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:

I

(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.

(4) On 29 November 2000 the Council, in accordance with the Tampere Conclusions,

* Amendments: new or amended text is highlighted in bold italics; deletions are indicated by the symbol

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¹ OJ C 54, 19.2.2011, p. 48.

² Position of the European Parliament of

adopted a programme of measures to implement the principle of mutual recognition of decisions in criminal matters¹. 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".

- (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 **suspected or accused persons** and common minimum standards necessary to facilitate the application of the principle of mutual recognition.
- (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.
- (6a) **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.**
- (6b) **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.

¹ OJ C 12, 15.1.2001, p. 10.

- (11) On 30 November 2009, the Council adopted the Roadmap for strengthening procedural rights of suspected and 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 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 to translation in criminal proceedings³.
- (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 Programme⁴, the Commission announced the presentation of a proposal on the right to information in 2010.
- (14a) ***This Directive should apply to suspected and accused persons regardless of their legal status, citizenship or nationality.***
- (15) ***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***

¹ OJ C 295, 4.12.2009, p. 1.

² OJ C 115, 4.5.2010, p. 1.

³ OJ L 280, 26.10.2010.

⁴ COM(2010)0171, 20.4.2010.

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.

- (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 this Directive. █
- (17) 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.**
- (18) ***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 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.***
- (18a) ***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.***
- (19) 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.

- (19a) *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.*
- (19b) *This Directive is without prejudice to the provisions of national law concerning safety of persons remaining in detention facilities.*
- (19c) *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.*
- (19d) *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.*
- (20) *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.***
- (21) *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.*
- (22) *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.*
- (23) *Documents and, where appropriate, photographs, audio and videorecordings, 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.

- (24) *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.*
- (24a) *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.*
- (24b) *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.*
- (24c) *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.*
- (24d) *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.*
- (24e) *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.*
- (24f) *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.*
- (24g) *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.

- (25) 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 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 the Directive and also once all the Roadmap measures have come into force.
- (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.
- (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 ■ and the right of defence ■ . It has to be implemented accordingly.
- (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.
- (29) 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.
- (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 ■ .

¹ OJ L 190, 18.7.2002, p.1.

- (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,

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.

1a. 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.

2. 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.

3. 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*.

3a. *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.*

3a. *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.*

3b. *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, 4, 5 and 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.
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

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

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



Indicative model Letter of Rights **■** :

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

¹ *According to Article 4(1)(a), 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.*

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

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.

EXPLANATORY STATEMENT

Ensuring that common minimum standards in criminal proceedings are in place would both better grant EU citizens' fundamental rights and help overcoming the difficulties encountered in the implementation of the principle of mutual recognition in criminal matters because of a lack of trust between judicial authorities.

Following to the failure of the adoption of a horizontal legal instrument on procedural rights in criminal proceedings (2004 Commission Proposal for a Framework Decision), the Council opted for a step by step approach and on 30 November 2009 adopted a Roadmap on procedural Rights inviting the Commission to table a series of legislative proposals corresponding to the measures listed in the Roadmap. The proposal for a Directive on the right to information in criminal matters presented by the European Commission in July 2010 is the second step of the list of measures contained in the Roadmap on Procedural Rights. It aims at setting common minimum standards as regards the right to *information in criminal proceedings* throughout the European Union. The first step, on the right to interpretation and translation, is a Directive adopted on 8 October 2010.

In the light of the proposal, the Directive should apply from the time that a person is made aware by the competent authorities of a Member State, by official notification or otherwise, that he/she is suspected or accused of having committed a criminal offence until the conclusion of the proceedings (including any appeal). Proceedings applying the European Arrest Warrant should also be within the scope whilst according to Recital 15 of the proposal, the Directive should 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.

The main purpose of the proposal is affirming that suspect and accused persons have the right to be informed about their rights. Such information should be given in simple and accessible language, orally or in writing, in a language that the suspected or accused person understands. Specific provisions concern children and persons who are partially sighted or blind or who cannot read. The information should be contained in the so called "Letter of Rights".

According to the proposal, specific information should be given in case where a person is deprived of liberty by Member States' competent authorities in the course of the criminal proceedings on suspicion of having committed a criminal offence (e.g. through arrest by the police and being placed in pre-trial detention on the order of a judge). Only in this case Member States would be required to give information on procedural rights in writing.

Together with a general right to be informed about procedural rights, the proposal aims to further define two specific rights: the right to information about the charge and the right to access to the case file. This last right is however limited as the proposal says that access to certain documents in the case-file may be excluded where this may lead to serious risk to the life of another person or may seriously harm the internal security of the Member State in

which the proceedings are taking place.

In order to ensure that the right to information is effectively granted, the proposal provides that a procedure is in place to assess whether the suspected or accused person has received the information and that an effective remedy is in place in case he/she has not.

Further provisions concern training and the non-regression clause.

Two Annexes are enclosed to the proposal: Annex I contains an *indicative* model of the Letter of Rights to be provided to a suspected or accused person on arrest whilst Annex II contains an *indicative* model of the Letter of Rights to be provided to a person arrested on the basis of a European Arrest Warrant.

Being "indicative" models, Member States would be free not to use them. It must be noted that the two annexes contains specifications that go much further than what granted by the proposal.

Position of the rapporteur

EU citizens are entitled to travel, study and work within the territory of the European Union. However, these freedoms are constrained by 27 different legal systems in the Member States. The EU is therefore aiming to establish a single area of justice, with common rules and intensive cooperation. While the existing legislative framework in the area of justice focuses primarily on enhanced cooperation between the judicial authorities of the Member States, this Directive concentrates on EU citizens and the rights they enjoy in case they are involved in criminal proceedings. If this happens, in somebody's home country or in another EU Member State, a fair trial in line with the ECHR case law must be granted. This implies respect of basic procedural rights such as consulting a lawyer or having interpretation and translation if needed.

Being aware of your rights is the first step to have them respected. Failure by public authorities to respect those rights will jeopardise the fairness of criminal proceedings and may lead to miscarriages of justice. Your Rapporteur therefore welcomes the aim of the Commission proposal which is to set common minimum standards as regards the right to information in criminal proceedings throughout the European Union. If adopted and correctly implemented it will improve the rights of suspects and accused persons by ensuring that they receive information about their rights.

This report amends the Commission proposal in order to ensure that the Directive covers all cases of limitation of personal freedom, irrespective of how Member States qualify the proceedings according to which the suspect has been deprived of his /her liberty. Nobody knows in advance how long a suspect will be kept in police custody or for how long the person will be deprived of his/her liberty. While the various rights mentioned in the Letter of rights might not always apply, the suspected or accused person is nonetheless entitled to be provided immediately with information in written on his/her procedural rights.

Article 3 of the Directive, laying down the procedural rights that all suspected and accused persons in criminal proceedings should be informed about at least, should be extended to the following rights:

- the right to interpretation and translation
- the right to access to a lawyer
- the conditions to obtain access to a lawyer free of charge
- the right to be informed of the accusation
- the right to access to the evidentiary materials related to the case
- the right to remain silent

The Letter of Rights should in addition contain the following information for arrested persons mentioned of this Directive:

a) how many hours/days the person may be deprived of his/her liberty before being brought before a judicial authority;

- b) how the person can challenge the arrest and how to obtain a review of his/her detention;
 - c) the maximum deadline for pre-trial detention applicable to his/her case
- The person should always be given the opportunity to read the Letter of Rights and be allowed to keep it in his/her possession throughout the time he/she is deprived of liberty.

It is important for Member States to ensure that a suspected or accused person is provided with sufficient information about the accusation to safeguard the fairness of the criminal proceedings and effectively exercise his/her right of defence. Taking into account the variety of procedural rules and the different meaning of the term "charge" across the Member States, the term "accusation" appears to be more appropriate. Member States should also ensure that a person who is subject to a criminal charge 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 undertake any defensive action. An arrested person should also, as soon as he/she is deprived of liberty, be provided with information about the reasons for his arrest, including information about the offence he/she is suspected of having committed, according to Article 4 of this Directive.

In addition, the concept of the case-file under Article 7 of the Commission proposal, which is not recognised by all Member States, could be better expressed using the term "the evidentiary materials related to the case", which widens the scope of the term. Member States should always ensure that a suspected or accused person or his lawyer is granted full access to the evidentiary materials related to the case in the possession of the competent authorities, at the latest when the investigation of the criminal offence is concluded. The suspected or accused person or his lawyer may request a list of the materials in the possession of the competent authorities.

As it would be confusing to have different Letters of rights, applying to different situations, they should be covered in one model of a letter of rights. This model contained in the Annex 1 to this Directive should be compulsory for Member States and as a minimum include the rights laid down in this Directive. The Directive contains a second Annex with a separate Letter of Rights on the European Arrest Warrant, as its execution is not considered to be a criminal proceeding in every Member State. This distinction has also been taken under measure A and therefore is consistent with the Road Map.

This Directive is only the second step in a series of measures in the Procedural Rights Roadmap and considered as part of a comprehensive package of legislation to be presented by the Commission over the next few years which will provide a minimum set of procedural rights in criminal proceedings in the European Union. Therefore, it would be highly welcome, if the Commission could provide a model of the Letter of rights at the end of the Road Map in accordance with the procedural rights still to be adopted in the coming years.

27.1.2011

OPINION OF THE COMMITTEE ON LEGAL AFFAIRS

for the Committee on Civil Liberties, Justice and Home Affairs

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))

Rapporteur: Jan Philipp Albrecht

SHORT JUSTIFICATION

Introduction

The European Convention on Human Rights and the EU Charter of Fundamental Rights while enshrining core defence rights, such as the right to have access to a lawyer, the right to interpretation and translation, the right to be informed of the charge, the right to a regular review of detention and the right to be brought before a court, offer limited detail about how those rights should be protected in practice.

The proposal currently before the Committee seeks to improve the rights of suspected or accused persons as regards information on rights and information about the charges. It also covers the situation when a person is arrested under a European Arrest Warrant for prosecution or execution of a sentence. Having common minimum standards in relation to these rights should facilitate the application of the principle of mutual recognition, thereby improving the functioning of judicial cooperation between Member States.

It constitutes the second measure of the "Roadmap" for strengthening procedural rights of suspected or accused persons in criminal proceedings¹, which also includes the right to translation and interpretation², to legal advice and legal aid, to communication with relatives, employers and consular authorities, and special safeguards for suspected or accused persons who are vulnerable and a green paper on pre-trial detention.

¹ European Council conclusions, 10-11 December 2009; Resolution of the Council of 30 November 2009 on a Roadmap for strengthening procedural rights of suspected or accused persons in criminal proceedings, 2009/C 295/01, 4.12.2009, OJ C 295/1.

² 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 proceedings, 26.10.2010, OJ L 280/1.

The core idea of the proposal is to ensure that the suspected or accused person is informed of the charge and his or her rights at least in writing and in simple and accessible language. The proposal contains two annexes. The first contains a model "Letter of Rights" to be presented upon arrest. The second contains a model letter to be presented in the specific case a person is arrested on the basis of a European arrest warrant.

Position of the rapporteur for opinion

Your rapporteur for opinion welcomes the Commission's proposal as a further step to enhance procedural rights in criminal proceedings in the Member States and to lay down a proper basis for mutual recognition of judicial decisions in criminal matters.

He however regrets that under the Roadmap for strengthening procedural rights, a piecemeal approach has been taken to the enforcement of what in his view are inextricably linked rights. It is particularly unfortunate that the right to information was presented as the second measure of the Roadmap, which in effect leads to a Commission proposal which contains "half a Letter of Rights", partly excluding the other rights concerning legal advice and legal aid, communication with relatives, employers and consular activities, and the rights of vulnerable suspects or accused persons. The amendments proposed try to remedy this inconsistency.

As regards the Letter of Rights concerning the European Arrest Warrant, your rapporteur for opinion is proposing to clear up misleading wording which would lead the requested person into believing that directly agreeing to his or her surrender is a right, whereas it actually leads to the person waiving his right to speciality in accordance with Article 13 of Framework Decision 2002/584/JHA on the European Arrest Warrant, thus allowing the issuing judicial authority to prosecute for offences other than those contained in the European Arrest Warrant.

On the whole, your rapporteur for opinion considers the Commission proposal to be strong and worthy of support. Unfortunately, the Council in its general approach contained in Document No. 17503/10 dated 6 December 2010 would severely weaken it by including several references to national law and adding more conditions for the giving of the Letter of Rights.

AMENDMENTS

The Committee on Legal Affairs calls on the Committee on Civil Liberties, Justice and Home Affairs, as the committee responsible, to incorporate the following amendments in its report:

Amendment 1

Proposal for a directive Recital 14 a (new)

Text proposed by the Commission

Amendment

(14a) This Directive applies to suspected and accused persons on EU territory regardless of their legal status, citizenship or nationality.

Amendment 2

Proposal for a directive Recital 23

Text proposed by the Commission

Amendment

(23) *Adequate* training on procedural rights of suspected and accused persons should be provided to the relevant officials in Member States.

(23) ***Appropriate and effective*** training on procedural rights of suspected and accused persons should be provided to the relevant officials in Member States.

Amendment 3

Proposal for a directive Recital 24 a (new)

Text proposed by the Commission

Amendment

(24a) 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.

Justification

The right to medical care was established in ECtHR 17 September 2009, Enea v. Italy, no. 74912/01, para. 57-58

Amendment 4

Proposal for a directive Article 2 – paragraph 1

Text proposed by the Commission

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.

Amendment

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 **or she** 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.

(Note: the change from "he" to "he or she", from "him" to "him or her" and from "his" to "his or her" should be made throughout the text.)

Amendment 5

Proposal for a directive Article 2 – paragraph 1 a (new)

Text proposed by the Commission

Amendment

1a. In this Directive, the term "competent authorities" shall include, but shall not be limited to, police and investigatory authorities, prosecutors, magistrates and judges.

Amendment 6

Proposal for a directive Article 3 – paragraph 1

Text proposed by the Commission

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.

Amendment

1. **The competent authorities** shall ensure that any person who is suspected or accused of having committed a criminal offence is provided promptly **and in any event before questioning takes place** with information on his procedural rights **at least in writing and** in simple and accessible language.

Amendment 7

Proposal for a directive Article 3 – paragraph 1 a (new)

Text proposed by the Commission

Amendment

1a. The competent authorities shall take steps to ensure that the suspected or accused person understands the information provided. If there is a possibility that the suspected or accused person is vulnerable due to age, language, incapacity or any other reason, the competent authorities shall take further steps to ensure those persons understand their rights. Where such understanding requires the assistance of a qualified interpreter in accordance with Directive 2010/64/EU or of a responsible adult in the case of a child or less able person, the competent authority shall also inform them of the relevant rights so that they can explain them to the suspected or accused person. The suspected or accused person shall confirm in writing that he has understood his rights.

Amendment 8

Proposal for a directive Article 3 – paragraph 2

Text proposed by the Commission

2. The information referred to in paragraph 1 shall include as a minimum:
- the right of access to a lawyer, where necessary free of charge,
 - 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,
 - the right to be brought promptly before a court if the suspected or accused person is arrested.

Amendment

2. The information referred to in paragraph 1 shall include as a minimum:
- the right of access to a lawyer, where necessary free of charge,
 - the right to be informed of the charge and, where appropriate, to be given access to *evidentiary materials of the case*,
 - the right to interpretation and translation,
 - the right to be brought promptly before a court if the suspected or accused person is arrested,
 - *the right to remain silent, and any implications there may be in exercising that right under national law.*

Amendment 9

Proposal for a directive Article 4

Text proposed by the Commission

The right to written information about rights *on arrest*

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.
2. The Letter of Rights shall be drafted in simple language and shall include at least that information referred to in Article 3(2).

Amendment

The right to written information about rights *on arrest or upon detention*

1. Where a person is *arrested or detained* by the competent authorities of a Member State in the course of criminal proceedings, he *or she* shall be promptly provided with information about his *or her* procedural rights in writing (Letter of Rights). He *or she* shall be given an opportunity to read the Letter of Rights and be allowed to keep it in his possession throughout the time he *or she* is deprived of his liberty.
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.*

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.

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.

and 2(a). The Letter of Rights shall contain at least the elements set out in Annex I to this Directive.

2a. In addition of to the information to be given under Article 3, the person arrested or detained shall be informed about the following:

(a) for how many hours or days he or she may be deprived of liberty before being brought before a judicial authority;

(b) how to challenge the arrest and how to obtain a review of his or her detention;

(c) the maximum period of pre-trial detention applicable to his or her case;

(d) the right to contact family, friends, and consular officials;

(e) the right to medical care;

(f) where applicable, the right to apply for supervision measures as an alternative to provisional detention.

3. Member States shall ensure that, where the suspected or accused person does not speak or understand the language of the proceedings, he *or she* receives the Letter of Rights in a language he *or 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 cannot read. Where the suspected or accused person is *vulnerable due to age, incapacity or any other reason*, the information contained in the Letter of Rights shall also be provided orally in a manner adapted to the *person's* age, level of maturity and intellectual and emotional capacities.

4. Where a Letter of Rights is not available in the appropriate language, the suspected or accused person shall be informed of his *or her* rights orally *by a qualified interpreter* in a language he *or she* understands *in accordance with Directive 2010/64/EU*. A Letter of Rights in a language he understands shall then be

given to him *or her* without undue delay.

Amendment 10

Proposal for a directive

Article 5

Text proposed by the Commission

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.***

Amendment

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 ***all of*** the rights of that person as laid down in the Framework Decision 2002/584/JHA. ***The Letter of Rights shall be drafted in simple language and shall contain at least the elements set out in*** Annex II to this Directive.

Justification

The Annex should be binding as to its content and should reflect the scope of this Directive. All of the rights of wanted persons laid down in Framework Decision 2002/584/JHA should be included in the relevant letter of rights.

Amendment 11

Proposal for a directive

Article 6 – paragraph 2

Text proposed by the Commission

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.

Amendment

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 ***a person is vulnerable due to age, incapacity or any other reason***, information about the charges shall be provided in a manner adapted to his ***or her*** age, level of maturity and intellectual and emotional capacities.

Justification

All forms of vulnerability should be taken into account, including for example mental incapacity

Amendment 12

Proposal for a directive

Article 6 – paragraph 3 a (new)

Text proposed by the Commission

Amendment

3a. The information provided under this Article shall be given orally and as soon as practicable in writing.

Amendment 13

Proposal for a directive

Article 6 – paragraph 3 b (new)

Text proposed by the Commission

Amendment

3b. The duty to provide the information under this Article shall continue throughout the proceedings where new information becomes known.

Amendment 14

Proposal for a directive

Article 7 – title

Text proposed by the Commission

Amendment

The right to access ***to the case-file***

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

Justification

There is not common understanding across Member States of the term "case-file".

Amendment 15

Proposal for a directive
Article 7 – paragraph 1

Text proposed by the Commission

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.

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.
Access to certain documents may be restricted if it is in the interest of the investigation.

Amendment 16

Proposal for a directive
Article 7 – paragraph 1

Text proposed by the Commission

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.

Amendment

1. Where a suspected or accused person is arrested ***or detained*** at any stage of the criminal proceedings, Member States shall ensure that he or his lawyer is granted access to documents which are relevant for the determination of the lawfulness of the arrest or detention.

Amendment 17

Proposal for a directive
Article 7 – paragraph 2

Text proposed by the Commission

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. Access to certain documents ***contained in the case-file*** may be refused

Amendment

2. Member States shall ensure that an accused person or his lawyer is granted access to the ***evidentiary materials of the case*** once the investigation of the criminal offence is concluded. Access to certain documents may be refused by a competent

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*.

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 *evidentiary materials of the case*.

Amendment 18

Proposal for a directive Article 7 – paragraph 2 a (new)

Text proposed by the Commission

Amendment

2a. Member States shall ensure that any restrictions on the right of access to the evidentiary materials of the case laid down in paragraph 2 do not in any way prejudice the accused persons' effective exercise of their right of defence.

Amendment 19

Proposal for a directive Article 7 – paragraph 2 b (new)

Text proposed by the Commission

Amendment

2b. Member States shall ensure that an effective remedy is available before an impartial tribunal to challenge the decision not to allow access to certain documents contained in the evidentiary materials of the case.

Amendment 20

Proposal for a directive Article 7 – paragraph 3

Text proposed by the Commission

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. It shall be provided free of charge.

Amendment

3. Access to the **evidentiary materials of the case** shall be provided in good time to allow the suspected or accused person to prepare his defence or challenge pre-trial decisions. It shall be provided free of charge.

Amendment 21

Proposal for a directive

Article 7 – paragraph 3 a (new)

Text proposed by the Commission

Amendment

Upon request, a suspected or accused person or that person's lawyer who has been granted access to the evidentiary materials of the case shall be given copies thereof. Member States may permit a reasonable fee to be charged for copies or for transmitting the evidentiary material. Recipients of legal aid shall be exempted from such fees.

Amendment 22

Proposal for a directive

Article 8 – paragraph -1 (new)

Text proposed by the Commission

Amendment

-1. 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 in accordance with the provisions of this Directive.

Justification

Clarified text on remedies

Amendment 23

**Proposal for a directive
Article 8 – paragraph 1**

Text proposed by the Commission

Amendment

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*.

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 *this Directive*.

Amendment 24

**Proposal for a directive
Annex I – Title**

Text proposed by the Commission

Amendment

Indicative model Letter of Rights for suspected and accused persons on arrest:

Model Letter of Rights for suspected and accused persons on arrest:

Justification

The annex should be binding.

Amendment 25

**Proposal for a directive
Annex I – table – point B**

Text proposed by the Commission

Amendment

B. to the assistance of a lawyer

B. to the assistance of a lawyer. *If you are not able to afford a lawyer, the police must provide you with information about how to get legal assistance.*

Amendment 26

Proposal for a directive Annex I – table – point C a (new)

Text proposed by the Commission

Amendment

Ca. not to say anything when questioned

Amendment 27

Proposal for a directive Annex I – table – point C b (new)

Text proposed by the Commission

Amendment

Cb. to contact your family, friends, and consular officials

Amendment 28

Proposal for a directive Annex I – table – point D

Text proposed by the Commission

Amendment

D. to know for how long you can be detained

D. to know for how long you can be detained, ***to a regular review of your detention and to provisional release***

Amendment 29

Proposal for a directive Annex I – table – point D a (new)

Text proposed by the Commission

Amendment

Da. to medical care

Justification

The right to medical care was established in ECtHR 17 September 2009, Enea v. Italy, no. 74912/01, para. 57-58.

Amendment 30

Proposal for a directive Annex I – Title C – indent 5(new)

Text proposed by the Commission

Amendment

– You cannot be forced to sign any documents in a language you do not understand. Refusing to do so will not be held against you.

Amendment 31

Proposal for a directive Annex I – Title C a (new)

Text proposed by the Commission

Amendment

Ca. The right not to say anything
– You have the right not to say anything when questioned by the police.
**[– If you choose to exercise this right, this may have the following consequences:
[...]]**

Justification

This compromise is necessary to reflect the reference to national law. The square brackets indicate a space to be used and completed if necessary by the Member States according to national law.

Amendment 32

Proposal for a directive Annex I – Title C b (new)

Text proposed by the Commission

Amendment

Cb. Contacting friends, family and consular authorities
– You have the right to contact your friends and family,

– The police must help you contact your friends, family and, where applicable, your country's consular authority or embassy. They must do this as soon as possible after you have been detained.

[- Contact will be established on your behalf if [...]]

– People from the embassy or consular authority can visit you and arrange for a lawyer to assist you.

Justification

This compromise is necessary to reflect the reference to national law. The square brackets indicate a space to be used and completed if necessary by the Member States according to national law.

Amendment 33

Proposal for a directive Annex II – table – point B

Text proposed by the Commission

Amendment

B. to the assistance of a lawyer

B. to the assistance of a lawyer. ***If you are not able to afford a lawyer the police must provide you with information about how to get legal assistance***

Amendment 34

Proposal for a directive Annex II – table – point C a (new)

Text proposed by the Commission

Amendment

Ca. to contact your family, friends, and consular officials

Amendment 35

Proposal for a directive Annex II – table – point D

Text proposed by the Commission

Amendment

D. *to be informed of your right to agree to surrender*

D. *to decide whether or not you agree to be surrendered to another country*

Amendment 36

Proposal for a directive Annex II – table – point E

Text proposed by the Commission

Amendment

E. to a hearing if you do not agree to *surrender*

E. to a hearing if you do not agree to *be surrendered*

Amendment 37

Proposal for a directive Annex II – table – point E a (new)

Text proposed by the Commission

Amendment

Ea. to ongoing information and regular review of your detention

Amendment 38

Proposal for a directive Annex II – table – point F a (new)

Text proposed by the Commission

Amendment

Fa. to medical care

Justification

The right to medical care was established in ECtHR 17 September 2009, Enea v. Italy, no. 74912/01, para. 57-58.

Amendment 39

Proposal for a directive Annex II – Title C – indent 5 (new)

Text proposed by the Commission

Amendment

– You cannot be forced to sign any documents in a language you do not understand. Refusing to do so will not be held against you.

Amendment 40

Proposal for a directive Annex II – Title C a (new)

Text proposed by the Commission

Amendment

Ca. Contacting friends, family and consular authorities

– You have the right to contact your friends and family.

– The police must help you contact your friends, family and, where applicable, your country's consular authority or embassy. They must do this as soon as possible after you have been detained.

[– Contact will be established on your behalf if [...]]

– People from the embassy or consular authority can visit you and arrange for a lawyer to assist you.

Justification

This compromise is necessary to reflect the reference to national law. The square brackets indicate a space to be used and completed if necessary by the Member States according to national law.

Amendment 41

Proposal for a directive Annex II – Title D

Text proposed by the Commission

D. *Your right to agree to surrender*

– You ***have the right to agree to being*** surrendered under a European Arrest Warrant. ***This should speed the procedure up.***

– If you agree to be surrendered, it may be difficult to change your decision at a later stage. You should speak to a lawyer before deciding whether or not to agree to surrender.

Amendment

D. *Surrender*

– You ***can agree to be*** surrendered ***to the country seeking your surrender*** under a European Arrest Warrant. ***You do not have to agree to be surrendered.***

– If you agree to be surrendered, it may be difficult to change your decision at a later stage.

– You should speak to a lawyer before deciding whether or not to agree to surrender. ***There are particular grounds you can rely on to prevent surrender. A lawyer can assist you in deciding whether they apply in your case.***

Amendment 42

Proposal for a directive Annex II – Title E

Text proposed by the Commission

– If you do not ***consent*** to be ***sent to the Member State seeking you, you are entitled*** to go before a judge and to explain why you ***don't consent.***

Amendment

– If you do not ***agree*** to be ***surrendered you have the right*** to go before a judge ***for a hearing*** and to explain why you ***do not agree.***

– ***The judge will decide whether the European Arrest Warrant has been correctly, legally and appropriately issued and whether you should be sent to the country which is seeking your surrender.***

– ***You have the right to be represented by a lawyer at this hearing.***

– ***If you are not able to afford a lawyer, you must be provided with information***

about how to obtain legal assistance.

Amendment 43

**Proposal for a directive
Annex II – Title E a (new)**

Text proposed by the Commission

Amendment

Ea. Ongoing information and regular review of detention

– you are entitled to ongoing information concerning the reasons for your detention and regular review of those reasons

– If you are not released, you must be brought before a judge within [X] hours after you have been deprived of your liberty.

PROCEDURE

Title	Right to information in criminal proceedings
References	COM(2010)0392 – C7-0189/2010 – 2010/0215(COD)
Committee responsible	LIBE
Opinion by Date announced in plenary	JURI 7.9.2010
Rapporteur Date appointed	Jan Philipp Albrecht 27.10.2010
Discussed in committee	1.12.2010
Date adopted	27.1.2011
Result of final vote	+: 22 -: 0 0: 0
Members present for the final vote	Raffaële Baldassarre, Sebastian Valentin Bodu, Françoise Castex, Christian Engström, Marielle Gallo, Lidia Joanna Geringer de Oedenberg, Klaus-Heiner Lehne, Alajos Mészáros, Bernhard Rapkay, Evelyn Regner, Francesco Enrico Speroni, Dimitar Stoyanov, Diana Wallis, Cecilia Wikström, Zbigniew Ziobro, Tadeusz Zwiefka
Substitute(s) present for the final vote	Piotr Borys, Vytautas Landsbergis, Kurt Lechner, Eva Lichtenberger, Toine Manders, Arlene McCarthy

PROCEDURE

Title	Right to information in criminal proceedings			
References	COM(2010)0392 – C7-0189/2010 – 2010/0215(COD)			
Date submitted to Parliament	20.7.2010			
Committee responsible Date announced in plenary	LIBE 7.9.2010			
Committee(s) asked for opinion(s) Date announced in plenary	JURI 7.9.2010			
Rapporteur(s) Date appointed	Birgit Sippel 26.10.2010			
Discussed in committee	13.9.2010	9.12.2010	17.3.2011	2.5.2011
	23.11.2011			
Date adopted	23.11.2011			
Result of final vote	+: -: 0:	48 0 2		
Members present for the final vote	Jan Philipp Albrecht, Alexander Alvaro, Roberta Angelilli, Vilija Blinkevičiūtė, Mario Borghezio, Emine Bozkurt, Simon Busuttil, Philip Claeys, Carlos Coelho, Tanja Fajon, Kinga Gál, Nathalie Griesbeck, Sylvie Guillaume, Anna Hedh, Salvatore Iacolino, Livia Járóka, Timothy Kirkhope, Monica Luisa Macovei, Véronique Mathieu, Georgios Papanikolaou, Carmen Romero López, Judith Sargentini, Birgit Sippel, Csaba Sógor, Renate Sommer, Rui Tavares, Valdemar Tomaševski, Kyriacos Triantaphyllides, Wim van de Camp, Axel Voss, Manfred Weber, Tatjana Ždanoka			
Substitute(s) present for the final vote	Elena Oana Antonescu, Michael Cashman, Anna Maria Corazza Bildt, Cornelis de Jong, Leonidas Donskis, Evelyne Gebhardt, Franziska Keller, Marian-Jean Marinescu, Joanna Senyszyn, Cecilia Wikström, Glenis Willmott			
Substitute(s) under Rule 187(2) present for the final vote	Sergio Gaetano Cofferati, Ismail Ertug, Esther Herranz García, Kent Johansson, Marit Paulsen, Ivo Vajgl, Andrea Zanoni			
Date tabled	25.11.2011			