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Subject:	Proposal for a Directive of the European Parliament and of the Council on the right to information in criminal proceedings: - Outstanding issues and consolidated text

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**I. INTRODUCTION**

Following the discussions at the Trilogue on 16 June 2011, the Presidency would like to submit to the attention of delegations the following compromise proposals between the Council's position and the requests for amendment of the European Parliament on the draft Directive on the right to information in criminal proceedings.

In order to facilitate the comprehension of the text, a consolidated version of the operative part of the draft Directive has been provided in annex. Changes compared to the general approach and until now provisionally agreed between EP and Council are highlighted in **bold**. Possible compromise solutions still subject to discussions are highlighted in ***bold and italic***. Alternative options still under discussion are set out in square brackets. New compromise solutions proposed to the attention of delegations are highlighted in ***bold, italic and underlined***.

As before, given the fact that the instrument is still subject to debate, the Presidency would like to reassure delegations that any provisional agreement on these issues will have to be confirmed against the results of future negotiations with the co-legislator (“nothing is agreed until everything is agreed”).

## **II. OUTSTANDING ISSUES**

### **1) Information about rights (Article 3)**

At the Trilogue on 16 June, while welcoming the substantial steps forward taken on a number of issues in the Directive, the European Parliament still expressed its reluctance to retain the wording "*as they apply under their national law*" as well as "*when those rights become applicable*". In this respect the European Parliament's compromise proposal would be the following:

*1. Member States shall ensure that any person who is suspected or accused is provided promptly, **and in any event upon questioning by law enforcement authorities**, with information concerning at least the following procedural rights **including how they are exercised under national law**:*

*[omissis]*

*2. The information referred to in paragraph 1 shall be provided **in due time** to allow the effective exercise of those rights, either orally or in writing, in simple and accessible language and **taking into account particular circumstances of vulnerable people**.*

To partially meet these concerns, the Presidency suggests the following amendments to the text of Article 3:

1. Member States shall ensure that any person who is suspected or accused of having committed a criminal offence is provided **promptly, and in any event upon questioning by law enforcement authorities** 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 of this Directive;***
- the right to interpretation and translation;
- the right to remain silent.

[omissis]

This proposal has to be read in conjunction with the changes brought into recital 18 which would read as follows:

(18) The suspected or accused person should be informed in due time by the competent authorities of those rights, provided for under national law, which are essential to safeguard the fairness of the proceedings, be it orally or in writing, as provided for by this Directive. ***In order to allow a practical and effective exercise of the rights of the suspected or accused person, the information should be provided as soon as possible in the course of the proceedings, at the latest before the first questioning of the suspected or the accused person by the police or another competent authority.***

Concerning the reference to Article 6 in the third indent of the list, the Presidency proposal would be to revert to this issue once an agreement has been reached on the content of the referred Article.

**Delegations are invited to endorse the above compromise wording for Article 3 of the draft Directive.**

## 2) Content of the Letter of rights (Article 4 (2))

At the meeting of the COREPER on 16 June the Presidency has proposed a revised compromise wording concerning the description of the content of the Letter of rights. The Presidency has taken note of a positive attitude of delegations on the matter, although concerns have been expressed by certain delegations in relation to specific issues. In order to further improve the proposal along the lines indicated by delegations, the Presidency would like to propose the following amendments:

- In relation to the first indent of the list : the reference to Article 7 has been deleted;
- In relation to the second indent: some delegations expressed their worries about the risk to preclude the ongoing discussion on the initiative on the right to communicate upon arrest that has been recently presented by the Commission; The Presidency proposes therefore to stick to the wording used by the roadmap ("*at least one person*") on the last sentence of paragraph 2, some delegations argued that the information required would be too extensive to fit with the condition of simplicity required by a Letter of Rights. The Presidency reiterates its proposal to address this concern by indicating that only "basic" information has to be provided. This is in line with the general requirement of a simple and accessible Letter of Rights.

**Delegations are invited to endorse the following compromise wording for the text of Article 4 para. 2a of the draft Directive:**

*Article 4*

*The right to written information about rights*

1. [omissis]

**2a.** 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 ***at least 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 to obtain a review of the detention or to ask for provisional release.*

[omissis]

4) The right to information about the accusation (Article 6)

At the trilogue on 16 June, while showing some understanding for the structure of the Article as proposed by the Council, the EP has reiterated its reluctance to accept the wording "*subject to a criminal charge*", as well as toward the differentiation in the level of information provided for under paragraphs 2 and 3 of the Council's general approach. It also asked to move the general obligation to inform about the accusation to the first paragraph of the Article. Furthermore, in the opinion of the EP (supported by COM) Article 6 (1a) has little added value and can be deleted or moved to the recitals.

**In order to find compromise, delegations are invited to consider the following wording:**

*Article 6*

*The right to information about the accusation*

1. (ex 2.) Member States shall ensure that a **suspected or accused** person **who is subject to a criminal charge** is provided **promptly** with (...) information about that **charge or the criminal act he is suspected of having committed. This information shall be provided in due time and in such detail as is necessary** to safeguard the fairness of the criminal proceedings and effectively exercise his right of defence

[1a. Member States shall ensure that a person who is officially interviewed as a suspect or accused by the police or another competent authority in the course of a criminal proceeding is informed of the criminal act he is suspected of having committed.]

2. (ex 1.) Member States shall ensure that a person who is [arrested/***deprived of liberty***] is informed of the reasons for his [arrest/***deprivation of liberty***], including the criminal act he is suspected of having committed.

3. **At the latest upon submission of the merits of the accusation to a court, the information on the accusation shall (...) include as a minimum:**

- (a) a description of the acts the accused is alleged to have committed, including time and place and
- (b) the nature **and legal classification** of the offence, **as well as the nature of participation by the accused person.**

4. **After submission of the merits of the accusation to a court, the accused person shall be informed of any changes to the information referred to in paragraph 3, where this is necessary to safeguard the fairness of the proceedings.**

In order to take into account the EP's request for specification of the content of the information on the charge outside the trial stage, Article 6 (1) as proposed above could be complemented by a Recital stating as follows:

*"(..) In the course of the proceedings the suspected or accused person should be informed in due time of the charge against him, or of the acts he is suspected of having committed. This information 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, and should include, where necessary and possible, a description of the facts the person is suspected or accused of having committed as well as the possible legal classification of the offence."*

#### 4) Exceptions to the right of access to the materials of the case (Article 7)

At the Trilogue on 16 June, the EP expressed strong opposition to the wording used in paragraph 1 of Article 7 which refers to "*information related to the specific case*". The EP would prefer a reference to "*material*" or "*document*" related to the case. In its amendment, EP also proposed to replace "*essential*" by "*relevant*".

**In order to partially meet these concerns, delegations are invited to consider the following wording for paragraph 1 of Article 7:**

1. Where a person is arrested and detained at any stage of the criminal proceedings, Member States shall ensure that all ***information*** related to the specific case in the possession of the competent authorities and which is essential to effectively challenge according to national law the lawfulness of the arrest or detention, is made available to the arrested person or his lawyer ***in writing***.

At the Coreper of 16 June, delegations also discussed the insertion in Article 7 (4) of an explicit reference to the possibility that the decision not to disclose certain materials be subject, at some stage of the procedure, to the review of a judicial authority. This possibility was also discussed with EP at the Trilogue on the same day. EP has insisted on the following wording for Article 7 (4):

*"4. Access to certain documents may exceptionally be refused on the basis of a reasoned decision by a competent judicial authority where access to those documents is likely to lead to serious risk to the life or fundamental rights of another person, is likely to seriously harm an overriding public interest such as in the cases where it risks to prejudice other ongoing investigations or where it may seriously harm the national security of the Member State in which the proceedings take place.*

Taking into account the comments made both by EP and the delegations, the Presidency would like to ask delegations to accept a possible compromise text.

**Delegations are invited to endorse the following compromise wording for paragraph 4 of Article 7:**

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 jeopardizing 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 be taken by a judicial authority or that the suspected or accused person has the right to challenge before a judicial authority a decision not to give access to certain materials.***<sup>1</sup>

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<sup>1</sup> See also recital 21b and modifications introduced in recital 22a.



2010/0215 (COD)

Proposal for a

**DIRECTIVE .../.../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 Committee<sup>1</sup>,  
Having regard to the opinion of the Committee of the Regions<sup>2</sup>,  
Acting in accordance with the ordinary legislative procedure,  
Whereas:

- (1)<sup>3</sup> 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.

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<sup>1</sup> OJ C , , p. .

<sup>2</sup> OJ C , , p. .

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

- (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 matters<sup>1</sup>. 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.
- (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 of the ECHR enshrine the rights to liberty and security, the limitations to which may not exceed those permitted by the ECHR in the wording of its Article 5 and inferred from the case-law of the European Court of Human Rights.
- (7) Although Member States are parties to the ECHR, 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.

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<sup>1</sup> OJ C 12, 15.1.2001, p. 10.

- (8) Strengthening mutual trust requires detailed rules on the protection of the procedural rights and guarantees stemming from the Charter and the ECHR.
- (9) Article 82(2) of the Treaty provides for the establishment of minimum rules applicable in the Member States so as to facilitate mutual recognition of judgments and judicial decisions and police and judicial cooperation in criminal matters having a cross-border dimension. Point (b) of Article 82(2) refers to "the rights of individuals in criminal procedure" as one of the areas in which minimum rules may be established.
- (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 and accused persons in criminal proceedings ("the Roadmap")<sup>1</sup>. 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) In the Stockholm Programme, adopted on 11 December 2009<sup>2</sup>, the European Council welcomed the Roadmap and made it part of the Stockholm Programme (point 2.4.). The European Council underlined the non-exhaustive character of the Roadmap, by inviting the Commission to examine further aspects of minimum procedural rights for suspected and accused persons, and to assess whether other issues, for instance the presumption of innocence, need to be addressed, in order to promote better cooperation in this area.

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<sup>1</sup> OJ C 295, 4.12.2009, p. 1.

<sup>2</sup> OJ C 115, 4.5.2010.

- (13) The first measure on the Roadmap is a Directive of the European Parliament and of the Council on the rights to interpretation and to translation in criminal proceedings<sup>1</sup>.
- (14) The present 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 Programme<sup>2</sup>, the Commission announced the presentation of a proposal on the right to information in 2010.
- (14a) The Directive should apply to suspected and accused persons regardless of their legal status, citizenship or nationality.**
- (15) (...)
- (15a) In some Member States an authority other than a court having jurisdiction in criminal matters has competence for imposing sanctions in relation to relatively minor offences. That may be the case, for example, in relation to traffic offences which are committed on a large scale and which might be established following a traffic control. In such situations, it would be unreasonable to require that the competent authority ensure all the rights under this Directive. Where the law of a Member State provides for the imposition of a sanction regarding minor offences by such an authority and there is either a right of appeal or the possibility for the case to be otherwise referred to a court having jurisdiction in criminal matters, this Directive should therefore apply only to the proceedings before that court following such an appeal or referral.

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<sup>1</sup> Directive 2010/64/EU of the European Parliament and of the Council on the rights to interpretation and translation in criminal proceedings of 20 October 2010.

<sup>2</sup> COM(2010) 171, 20.4.2010.

- (16) The right to information about procedural rights (which is inferred from the case-law of the European Court of Human Rights) should be explicitly established by the Directive.
- (17) (...)
- (18) The suspected or accused person should be informed in due time by the competent authorities of those rights, provided for under national law, which are essential to safeguard the fairness of the proceedings, be it orally or in writing, as provided for by this Directive.  
***In order to allow a practical and effective exercise of the rights of the suspected or accused person, the information should be provided as soon as possible in the course of the proceedings, at the latest before the first questioning of the suspected or the accused person by the police or another competent authority.***
- (18a)** Information about those rights should as a minimum requirement under this Directive include information on the right of access to a lawyer, any entitlement to legal advice free of charge and the conditions for obtaining it, the right to interpretation and translation, the right to remain silent and, when the person is arrested, the information on the national law on the maximum length of deprivation of liberty before being brought before a judicial authority after arrest. 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.

(19) Where a suspected or accused person is arrested, information about applicable procedural rights should be given by means of a written Letter of Rights drafted in an easily comprehensible manner so as to assist the actual understanding of his rights. [To help Member States design such a Letter of Rights, a model of the Letter of Rights, which Member States may use, is provided in Annex I to the Directive. This model is indicative and may be subject to review in the context of the report on implementation to be presented by the European Commission pursuant to Article 12 of the Directive and also once all the Roadmap measures have come into force. The actual letter may also include other relevant procedural rights that apply in Member States] <sup>1</sup>.

***(19a) In cases where the competent authority has already informed the suspected or accused person of the accusation itself, the obligation to inform him of the right to be informed of the accusation according to Art. 3 para 1 should not apply.***

(19a) The arrested person should be allowed to keep in his possession the Letter of Rights throughout the time he is deprived of his liberty. However, under exceptional circumstances, when necessary to safeguard the safety of the person under arrest or another person, competent authorities may decide not to allow the arrested person to keep in his possession the Letter of Rights, provided that he has been fully informed about its content.

(19b) (...).

(19c) When providing the suspected or accused person with information in accordance with this Directive, competent authorities should pay particular attention to suspected or accused person who cannot understand or follow the content or the meaning of the information, owing, for example, to their young age, mental or physical condition.

(20) A person accused of having committed a criminal offence should be given all the information on the criminal charge necessary to enable him to prepare his defence and to safeguard the fairness of the proceedings.

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<sup>1</sup> See footnote under Article 4(3).

(21) (...)

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

(21b) Access to the material evidence for or against the accused in the possession of the competent authorities, as provided for under this Directive, may be refused, according to national law, if this may lead to the serious risk for the fundamental rights of another person or if strictly necessary to safeguard an important public interest. This must be weighed against the rights of defence of the suspected or accused person, taking into account the different phases of the proceedings. These limitations should be interpreted strictly and in accordance with the principle of the right to a fair trial as provided by the ECHR and interpreted by case law of the European Court of Human Rights.

(21c) Access to the materials of the case may be provided directly, by allowing consultation of the materials or documents contained therein, or indirectly, by providing copies or information about its contents, if so required by national law.

(21d) Consultation of the materials of the case, as provided for by this Directive, should be provided free of charge. This is without prejudice to provisions of the national laws of the Member States requiring payment of any fees for copies to be extracted from the case file or for the sending costs to the person concerned or his lawyer.

(22) (...)

- (22a) A suspected or accused person or his lawyer should have the right to challenge, in accordance with procedures in national law, the possible failure or refusal of the competent authorities to provide the information ***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.
- (23) Without prejudice to judicial independence and differences in the organization 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.
- (23a) 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 States<sup>1</sup>. [To help Member States design such a Letter of Rights a model form of the Letter of Rights, which Member States may use, is provided in Annex II to the Directive. This model form is indicative and may be subject to review in the context of the report on implementation to be presented by the European Commission pursuant to Article 12 of the Directive and also once all the Roadmap measures have come into force]<sup>2</sup>.

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<sup>1</sup> OJ L 190 of 18.7.2002, p.1.

<sup>2</sup> See footnote under Article 5 with regard to the Annex II.



- (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 rights of the 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, either at national, regional or local level, and can only be achieved at Union level, the European Parliament and the Council may adopt measures in accordance with the principle of subsidiarity as referred to in Article 5 of the Treaty on European Union. In accordance with the principle of proportionality, as set out in the latter Article, this Directive does not go beyond what is necessary in order to achieve that objective.
- (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.
- (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 about (...) rights in criminal proceedings and **rights in** proceedings for the execution of a European arrest warrant and about the [charge/*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. (...)
3. Where the law of a Member State provides for the imposition of a sanction regarding minor offences by an authority other than a court having jurisdiction in criminal matters, and the imposition of such a sanction may be appealed to such a court, this Directive shall apply only to the proceedings before that court following such an appeal.

### 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, and in any event upon questioning by law enforcement authorities** 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 of this Directive;***
  - the right to interpretation and translation;
  - the right to remain silent.
- 1a. (...)
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/***deprived of liberty***] 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 [***unless this could directly lead to a risk of harm to the detained person or another person***]<sup>1</sup>.
  
- 2a. 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 ***at least 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 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<sup>2</sup>.
  
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.

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<sup>1</sup> EP and COM have, for the time being, expressed their opposition to include the words within brackets in the text.

<sup>2</sup> The status and content of such model, including the question of whether it should be contained in an Annex to the present Directive, was discussed at the DROIPEN meeting on 27 January 2011 and at CATS level on 11 February 2011. Delegations are strongly in favour of the indicative and non-compulsory nature of the Annex.

## 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 national law concerning at least the rights of that person as laid down in Articles 11, 13 (2), 14 and **19** of the Framework Decision 2002/584/JHA.<sup>1</sup> Annex II to this Directive contains an indicative model of such Letter<sup>2</sup>. **The Letter of Rights shall be drafted in simple and accessible language.**

## Article 6

### *The right to information about the accusation*

1. (ex 2.) Member States shall ensure that a **suspected or accused** person **who is subject to a criminal charge** is provided **promptly** with (...) information about that **charge or the criminal act he is suspected of having committed. This information shall be provided in due time and in such detail as is necessary** to safeguard the fairness of the criminal proceedings and effectively exercise his right of defence
2. (ex 1.) Member States shall ensure that a person who is [arrested/***deprived of liberty***] is informed of the reasons for his [arrest/***deprivation of liberty***], including the criminal act he is suspected of having committed.
- [1a. Member States shall ensure that a person who is officially interviewed as a suspect or accused by the police or another competent authority in the course of a criminal proceeding is informed of the criminal act he is suspected of having committed.]

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<sup>1</sup> EP has declared its availability to accept the structure of the paragraph subject to a further enlargement of the list of Articles of the EAW Framework Decision. The following compromise solution has been proposed: "*at least the rights of that person **and the procedures as laid down in Articles 11, 12, 13 (2), 14 and 19 of the Framework Decision 2002/584/JHA**". Articles 13 (as a whole), 18 (3) and 23 (5) were also mentioned by the EP at the Trilogue on 16 June.*

<sup>2</sup> See footnote under Article 4(2).

3. **At the latest upon submission of the merits of the accusation to a court, the information on the accusation shall (...) include as a minimum:**
  - (a) a description of the acts the accused is alleged to have committed, including time and place and
  - (b) the nature and legal classification of the offence, as well as the nature of participation by the accused person.
  
4. **After submission of the merits of the accusation to a court, the accused person shall be informed of any changes to the information referred to in paragraph 3, 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 all **information** related to the specific case in the possession of the competent authorities and which is essential to effectively challenge according to national law the lawfulness of the arrest or detention, is made available to the arrested person or his lawyer **in writing**.
  
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 jeopardizing 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 be taken by a judicial authority or that the suspected or accused person has the right to challenge before a judicial authority a decision not to give access to certain materials.***
5. The information or 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 Article 4(1), 5 and 6(1a)<sup>1</sup> 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.

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<sup>1</sup> EP insists on extending the obligation to record also to information provided according to Articles 3 and 7 of the draft 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 **the Charter, the** European Convention for the Protection of Human Rights and Fundamental Freedoms, 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...<sup>1</sup> .
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.

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<sup>1</sup> 24 months after publication of this Directive in the *Official Journal*.



*Article 12*

*Report*

The Commission shall, by .....<sup>1</sup> 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 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 Brussels,*

For the European Parliament

*The President*

For the Council

*The President*

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<sup>1</sup> 36 months after publication of this Directive in the *Official Journal*.