

## **Directive 2012/13/EU of the European Parliament and of the Council of 22 May 2012 on the right to information in criminal proceedings**

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,

After consulting the Committee of the Regions,

Acting in accordance with the ordinary legislative procedure,

Whereas:

- (1) The Union has set itself the objective of maintaining and developing an area of freedom, security and justice. According to the Presidency Conclusions of the European Council in Tampere of 15 and 16 October 1999, and in particular point 33 thereof, the principle of mutual recognition of judgments and other decisions of judicial authorities should become the cornerstone of judicial cooperation in both civil and criminal matters within the Union because enhanced mutual recognition and the necessary approximation of legislation would facilitate cooperation between competent authorities and the judicial protection of individual rights.
- (2) On 29 November 2000, the Council, in accordance with the Tampere conclusions, adopted a programme of measures to implement the principle of mutual recognition of decisions in criminal matters. The introduction to the programme states that mutual recognition is 'designed to strengthen cooperation between Member States but also to enhance the protection of individual rights'.
- (3) The implementation of the principle of mutual recognition of decisions in criminal matters presupposes that Member States trust in each other's criminal justice systems. The extent of mutual recognition is very much dependent on a number of parameters, which include mechanisms for safeguarding the rights of suspects or accused persons and common minimum standards necessary to facilitate the application of the principle of mutual recognition.
- (4) Mutual recognition of decisions in criminal matters can operate effectively only in a spirit of trust in which not only judicial authorities but all actors in the criminal process consider decisions of the judicial authorities of other Member States as equivalent to their own, implying not only trust in the adequacy of other Member States' rules, but also trust that those rules are correctly applied.
- (5) Article 47 of the Charter of Fundamental Rights of the European Union (hereinafter 'the Charter') and Article 6 of the European Convention for the Protection of Human Rights and Fundamental Freedoms (hereinafter 'the ECHR') enshrine the right to a fair trial. Article 48(2) of the Charter guarantees respect for the rights of the defence.
- (6) Article 6 of the Charter and Article 5 ECHR enshrine the right to liberty and security of person. Any restrictions on that right must not exceed those permitted in accordance with Article 5 ECHR and inferred from the case-law of the European Court of Human Rights.
- (7) Although all the Member States are party to the ECHR, experience has shown that that alone 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 arising 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. That Article 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 be established in the field of information in criminal proceedings.
- (11) On 30 November 2009, the Council adopted a resolution on a Roadmap for strengthening procedural rights of suspected or accused persons in criminal proceedings (hereinafter 'the Roadmap'). Taking a step-by-step approach, the Roadmap called for the adoption of measures regarding the right to

translation and interpretation (measure A), the right to information on rights and information about the charges (measure B), the right to legal advice and legal aid (measure C), the right to communication with relatives, employers and consular authorities (measure D), and special safeguards for suspects or accused persons who are vulnerable (measure E). The Roadmap emphasises that the order of the rights is only indicative and thus implies that it may be changed in accordance with priorities. The Roadmap 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 — An open and secure Europe serving and protecting citizens (point 2.4). The European Council underlined the non-exhaustive character of the Roadmap, by inviting the Commission to examine further elements of minimum procedural rights for suspects 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 that area.
- (13) The first measure adopted pursuant to the Roadmap, measure A, was 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.
- (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. This Directive builds on the rights laid down in the Charter, and in particular Articles 6, 47 and 48 thereof, by building upon Articles 5 and 6 ECHR as interpreted by the European Court of Human Rights. In this Directive, the term 'accusation' is used to describe the same concept as the term 'charge' used in Article 6(1) ECHR.
- (15) In its Communication of 20 April 2010 entitled 'Delivering an area of freedom, security and justice for Europe's citizens — Action Plan Implementing the Stockholm Programme', the Commission announced that it would present a proposal on the right to information on rights and information about charges in 2010.
- (16) This Directive should apply to suspects and accused persons regardless of their legal status, citizenship or nationality.
- (17) 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.
- (18) 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.
- (19) The competent authorities should inform suspects or accused persons promptly of those rights, as they apply under national law, which are essential to safeguarding the fairness of the proceedings, either orally or in writing, as provided for by this Directive. In order to allow the practical and effective exercise of those rights, the information should be provided promptly in the course of the proceedings and at the latest before the first official interview of the suspect or accused person by the police or by another competent authority.
- (20) This Directive lays down minimum rules with respect to the information on rights of suspects or accused persons. This is without prejudice to information to be given on other procedural rights arising out of the Charter, the ECHR, national law and applicable Union law as interpreted by the relevant courts and tribunals. Once the information about a particular right has been provided, 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.
- (21) References in this Directive to suspects or accused persons who are arrested or detained should be understood to refer to any situation where, in the course of criminal proceedings, suspects or accused persons are deprived of liberty within the meaning of Article 5(1)(c) ECHR, as interpreted by the case-law of the European Court of Human Rights.
- (22) Where suspects or accused persons are 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 those persons in understanding their rights. Such a Letter of Rights should be provided promptly to each arrested person when 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, obtaining a review of the detention, or requesting provisional release where, and to the extent that, such a right exists in national law. To help Member States draw up such a Letter of Rights, a model is provided in Annex I. That model is indicative and may be subject to review in the context of the Commission's report on the implementation of this Directive and also once all the Roadmap measures have entered into force. The Letter of Rights may include other relevant procedural rights that apply in Member States.

- (23) Specific conditions and rules relating to the right of suspects or accused persons to have another person informed about their arrest or detention are to be determined by the Member States in their national law. As set out in the Roadmap, the exercise of that right should not prejudice the due course of the criminal proceedings.
- (24) This Directive is without prejudice to the provisions of national law concerning safety of persons remaining in detention facilities.
- (25) Member States should ensure that, when providing information in accordance with this Directive, suspects or accused persons are provided, where necessary, with translations or interpretation into a language that they understand, in accordance with the standards set out in Directive 2010/64/EU.
- (26) When providing suspects or accused persons with information in accordance with this Directive, competent authorities should pay particular attention to persons who cannot understand the content or meaning of the information, for example because of their youth or their mental or physical condition.
- (27) Persons accused of having committed a criminal offence should be given all the information on the accusation necessary to enable them to prepare their defence and to safeguard the fairness of the proceedings.
- (28) The information provided to suspects or accused persons about the criminal act they are suspected or accused of having committed should be given promptly, and at the latest before their first official interview by the police or another competent authority, and without prejudicing the course of ongoing investigations. A description of the facts, including, where known, time and place, relating to the criminal act that the persons are suspected or accused of having committed and the possible legal classification of the alleged offence should be given in sufficient detail, taking into account the stage of the criminal proceedings when such a description is given, to safeguard the fairness of the proceedings and allow for an effective exercise of the rights of the defence.
- (29) Where, in the course of the criminal proceedings, the details of the accusation change to the extent that the position of suspects or accused persons is substantially affected, this should be communicated to them where necessary to safeguard the fairness of the proceedings and in due time to allow for an effective exercise of the rights of the defence.
- (30) Documents and, where appropriate, photographs, audio and video recordings, which are essential to challenging effectively the lawfulness of an arrest or detention of suspects or accused persons in accordance with national law, should be made available to suspects or accused persons or to their lawyers at the latest before a competent judicial authority is 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 the arrest or detention.
- (31) For the purpose of this Directive, access to the material evidence, as defined in national law, whether for or against the suspect or accused person, which is 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 and audio and video recordings. Such materials may be contained in a case file or otherwise held by competent authorities in any appropriate way in accordance with national law.
- (32) Access to the material evidence in the possession of the competent authorities, whether for or against the suspect or accused person, as provided for under this Directive, may be refused, in accordance with national law, where such access may lead to a serious threat to the life or fundamental rights of another person or where refusal of such access is strictly necessary to safeguard an important public interest. Any refusal of such access must be weighed against the rights of the defence of the suspect or accused person, taking into account the different stages of the criminal proceedings. Restrictions on such access should be interpreted strictly and in accordance with the principle of the right to a fair trial under the ECHR and as interpreted by the case-law of the European Court of Human Rights.
- (33) The right of access to the materials of a case should be without prejudice to the provisions of national law on the protection of personal data and the whereabouts of protected witnesses.
- (34) Access to the materials of the case, as provided for by this Directive, should be provided free of charge, without prejudice to provisions of national law providing for fees to be paid for documents to

be copied from the case file or for sending materials to the persons concerned or to their lawyer.

- (35) Where information is provided in accordance with this Directive, the competent authorities should take note of this in accordance with existing recording procedures under national law and should not be subject to any additional obligation to introduce new mechanisms or to any additional administrative burden.
- (36) Suspects or accused persons or their lawyers should have the right to challenge, in accordance with national law, the possible failure or refusal of the competent authorities to provide 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 a complaint procedure in which such failure or refusal may be challenged.
- (37) Without prejudice to judicial independence and to 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.
- (38) 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 suspects or accused persons with information about their 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 simple and non-technical language so as to be easily understood by a lay person without any knowledge of criminal procedural law.
- (39) The right to written information 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 under Council Framework Decision 2002/584/JHA of 13 June 2002 on the European arrest warrant and the surrender procedures between Member States. To help Member States draw up a Letter of Rights for such persons, a model is provided in Annex II. That model is indicative and may be subject to review in the context of the Commission's report on implementation of this Directive and also once all the Roadmap measures have come into force.
- (40) This Directive sets minimum rules. Member States may extend the rights set out in this Directive in order to provide a higher level of protection also in situations not explicitly dealt with in this Directive. The level of protection should never fall below the standards provided by the ECHR as interpreted in the case-law of the European Court of Human Rights.
- (41) 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 should be implemented accordingly.
- (42) The provisions of this Directive that correspond to rights guaranteed by the ECHR should be interpreted and implemented consistently with those rights, as interpreted in the case-law of the European Court of Human Rights.
- (43) Since the objective of this Directive, namely establishing common minimum standards relating to the right to information in criminal proceedings, cannot be achieved by Member States acting unilaterally, at national, regional or local level, and can therefore, by reason of its scale and effects, be better achieved at Union level, the Union may adopt measures in accordance with the principle of subsidiarity as set out in Article 5 of the Treaty on European Union. In accordance with the principle of proportionality, as set out in that Article, this Directive does not go beyond what is necessary in order to achieve that objective.
- (44) In accordance with Article 3 of the Protocol (No 21) 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, those Member States have notified their wish to take part in the adoption and application of this Directive.
- (45) In accordance with Articles 1 and 2 of the Protocol (No 22) 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 not bound by it or subject to its application,

HAVE ADOPTED THIS DIRECTIVE:

#### *Article 1*

#### **Subject matter**

This Directive lays down rules concerning the right to information of suspects or accused persons, relating to their rights in criminal proceedings and to the accusation against them. It also lays down rules concerning the right to information of persons subject to a European Arrest Warrant relating to their rights.

## *Article 2*

### **Scope**

1. This Directive applies from the time persons are made aware by the competent authorities of a Member State that they are 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 suspect or accused person has committed the criminal 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*

### **Right to information about rights**

1. Member States shall ensure that suspects or accused persons are provided promptly with information concerning at least the following procedural rights, as they apply under national law, in order to allow for those rights to be exercised effectively:
  - (a) the right of access to a lawyer;
  - (b) any entitlement to free legal advice and the conditions for obtaining such advice;
  - (c) the right to be informed of the accusation, in accordance with Article 6;
  - (d) the right to interpretation and translation;
  - (e) the right to remain silent.
2. Member States shall ensure that the information provided for under paragraph 1 shall be given orally or in writing, in simple and accessible language, taking into account any particular needs of vulnerable suspects or vulnerable accused persons.

## *Article 4*

### **Letter of Rights on arrest**

1. Member States shall ensure that suspects or accused persons who are arrested or detained are provided promptly with a written Letter of Rights. They shall be given an opportunity to read the Letter of Rights and shall be allowed to keep it in their possession throughout the time that they are deprived of liberty.
2. In addition to the information set out in Article 3, the Letter of Rights referred to in paragraph 1 of this Article shall contain information about the following rights as they apply under national law:
  - (a) the right of access to the materials of the case;
  - (b) the right to have consular authorities and one person informed;
  - (c) the right of access to urgent medical assistance; and
  - (d) the maximum number of hours or days suspects or accused persons may be deprived of liberty before being brought before a judicial authority.
3. The Letter of Rights shall also contain basic information about any possibility, under national law, of challenging the lawfulness of the arrest; obtaining a review of the detention; or making a request for provisional release.
4. The Letter of Rights shall be drafted in simple and accessible language. An indicative model Letter of Rights is set out in Annex I.
5. Member States shall ensure that suspects or accused persons receive the Letter of Rights written in a language that they understand. Where a Letter of Rights is not available in the appropriate language, suspects or accused persons shall be informed of their rights orally in a language that they understand. A Letter of Rights in a language that they understand shall then be given to them without undue delay.

## *Article 5*

### **Letter of Rights in European Arrest Warrant proceedings**

1. Member States shall ensure that persons who are arrested for the purpose of the execution of a European Arrest Warrant are provided promptly with an appropriate Letter of Rights containing information on their rights according to the law implementing Framework Decision 2002/584/JHA in the executing Member State.
2. The Letter of Rights shall be drafted in simple and accessible language. An indicative model Letter of Rights is set out in Annex II.

#### *Article 6*

##### **Right to information about the accusation**

1. Member States shall ensure that suspects or accused persons are provided with information about the criminal act they are suspected or accused of having committed. That information shall be provided promptly and in such detail as is necessary to safeguard the fairness of the proceedings and the effective exercise of the rights of the defence.
2. Member States shall ensure that suspects or accused persons who are arrested or detained are informed of the reasons for their arrest or detention, including the criminal act they are suspected or accused of having committed.
3. Member States shall ensure that, at the latest on 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 criminal offence, as well as the nature of participation by the accused person.
4. Member States shall ensure that suspects or accused persons are informed promptly of any changes in the information given in accordance with this Article where this is necessary to safeguard the fairness of the proceedings.

#### *Article 7*

##### **Right of 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 challenging effectively, in accordance with national law, the lawfulness of the arrest or detention, are made available to arrested persons or to their lawyers.
2. Member States shall ensure that access is granted at least to all material evidence in the possession of the competent authorities, whether for or against suspects or accused persons, to those persons or their lawyers in order 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 rights of the defence and at the latest upon submission of the merits of the accusation to the judgment 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. By way of derogation from paragraphs 2 and 3, provided that this does not prejudice the right to a fair trial, access to certain materials may be refused if such access may lead to a serious threat to the life or the fundamental rights of another person or if such refusal is strictly necessary to safeguard an important public interest, such as in cases where access could prejudice an ongoing investigation or seriously harm the national security of the Member State in which the criminal proceedings are instituted. Member States shall ensure that, in accordance with procedures in national law, a decision to refuse access to certain materials in accordance with this paragraph is taken by a judicial authority or is at least subject to judicial review.
5. Access, as 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 suspects or accused persons in accordance with Articles 3 to 6 this is noted using the recording procedure specified in the law of the Member State concerned.
2. Member States shall ensure that suspects or accused persons or their lawyers have the right to challenge, in accordance with procedures in national law, the possible failure or refusal of the competent authorities to provide 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**

Nothing in this Directive shall be construed as limiting or derogating from any of the rights or procedural safeguards that are ensured under the Charter, the ECHR, other relevant provisions of international law or the law of any Member State which provides 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 June 2014.
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 2 June 2015, 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 Strasbourg, 22 May 2012.