



EU Directive 2016/1919 and its implementation in the Member States

Meeting Directive 2016/1919
New age of legal aid
Vilnius
27 June 2019

Procedural safeguards for suspects and accused persons

Directive 2010/64/EU (27/10/2013)

Interpretation and translation

Directive 2012/13/EU (02/06/2014)

Information

Directive 2013/48/EU (27/11/2016)

Access to lawyer; information of and communication with third persons and consular authorities

Directive (EU) 2016/343 (01/04/2018)

Presumption of innocence

Directive (EU) 2016/800 (11/06/2019)

Children

Directive (EU) 2016/1919 (5/05/2019)

Legal aid

2009 Roadmap

Measure C: Legal Advice and Legal Aid

'The right to legal advice (through a legal counsel) for the suspected or accused person in criminal proceedings at the earliest appropriate stage of such proceedings is fundamental in order to safeguard the fairness of the proceedings; the right to legal aid should ensure effective access to the aforementioned right to legal advice.'

Directive on the right of access to a lawyer – Split of Measure C

- COM proposal brought together the third and fourth steps of the Roadmap: Measure C inasmuch as it refers to legal advice + Measure D (communication upon arrest)
- Opportunity vs. guarantee approach
- Importance of scope of the Directive: right to a lawyer is granted, under the proposal, to all suspects and accused persons, irrespective of whether they are arrested or at liberty

Directive on the right of access to a lawyer –content

- Application to all suspects and accused persons
- Article 3 (4) of the Directive
- Final compromise: derogations – confidentiality
- Transposition period ended on 27 Nov. 2016
- Currently on-going: completeness and conformity check of national legislations in the Member States
- Commission report in autumn 2019

Directive on Legal aid – state of play concerning transposition

- Notifications to the Commission (Article 12 of the Directive):
 - Complete transposition: 17 Member States
 - Partial transposition: 3 Member States
 - No notification: 5 Member States
- Next steps:
 - Starting infringement proceedings for non-communication
 - Completeness and conformity check

Directive on Legal aid - overview

- Scope, Article 2
- Legal aid in criminal proceedings, Article 4
- Legal aid in European arrest warrant proceedings, Article 5
- Decisions regarding the granting of legal aid, Article 6
- Quality and training, Article 7

Directive on Legal aid Commission proposal

- Complement the Directive on the right of access to a lawyer
- Making sure that the right of access to a lawyer is an effective right
- Focussing on the situations where persons are the most vulnerable:
 1. Situations of deprivation of liberty in the early stages of the proceedings, and
 2. European arrest warrant proceedings
- Commission Recommendation concerning other aspects

Directive on Legal aid Council General Approach

- Maintains reference to 'provisional legal aid'
- Limitations:
 1. Exclusion of minor crimes (even if deprivation of liberty takes place)
 2. Exclusion of certain temporary 'restrictions of liberty'
 3. Proportionality criteria in certain 'less serious offences'
- Division in Council

Directive on Legal aid Vote in Parliament

Parliament proposed to extend the scope of the Directive amongst others by including:

- A right to provisional legal aid to all suspects and accused persons – not only those deprived of liberty
- Rules on ordinary legal aid – including a means and a merits test
- Rules on the administration and quality of legal aid (including training) and a provision on remedies

Provisional vs ordinary legal aid

- Extensions suggested by European Parliament (provisional legal aid beyond situations of deprivation of liberty; new Article 4a)
- Challenge: Positions of EP and Council appeared extremely far from each other
- Solution: reference to legal aid in general; slight extension of the scope (Article 2 – mandatory defence and evidence gathering)
- Consequences:
 - No need to negotiate about recovery aspect, Article 4(5)
 - Focus of the negotiation on criteria for legal aid

Article 4 of the Directive on Legal aid criteria for legal aid

- Rationale of the Commission proposal: emergency legal aid without any further criteria
- Proportionality test suggested by Council
- Extension of scope proposed by EP
- Solution:
 - Reference to means or merits test or combination of both: large margin of discretion (Article 4(2)-(4) and Article 9)
 - Additional safeguards in Article 4(4)
 - Legal aid to be granted without undue delay (Article 4(5); Recital 19)

Article 4 and 5 of the Directive on Legal aid Legal aid in EAW proceedings

- Change of architecture – Article 4 and 5
- Legal aid in the executing Member State and in the issuing Member State (EAW for purpose of conducting criminal prosecution)
- Member State of evidence gathering (Directive 2014/41/EU regarding the European Investigation Order)
- Means testing

Added value?

- Referral to criteria used by ECtHR, but text will be interpreted by ECJ EU (preliminary rulings and infringement proceedings)
- Legal aid to be granted without undue delay
- Legal aid in the executing Member State and in the issuing Member State (EAW for purpose of conducting criminal prosecution) – means test only



Thank you!

European Commission
DG Justice, Criminal Justice and Consumers

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