



**Guidance Booklet for
Police Officers on the
Right to Information,
Right of Access to a
Lawyer and Right to
Legal Aid**

Contents

Purpose of the Booklet	03
Directives' Overview	04
Safeguarding procedural rights: practical guidance for police officers	08
1.1. The right to information	09
1.1.1. Letter of Rights	10
1.1.2. Good practices and recommendations	11
1.2. The right of access to a lawyer	12
1.2.1. Good practices and recommendations	13
1.3. The right to legal aid	14
1.3.1. Good practices and recommendations	14
FULL-PROOF Project	15

PURPOSE OF THE BOOKLET

This Booklet is designed to support police officers in their daily interactions with suspects and accused persons. It provides clear and accessible information and responses to the most pressing questions encountered in practice, along with guidance and suggestions drawn from established good practices, in relation to the rights of suspects and accused persons enshrined in the Directives 2012/13/EU (right to information), 2013/48/EU (right of access to a lawyer) and 2016/1919/EU (right to legal aid).

It is grounded in the premise that access to clear, accessible and practical information can support observance of the rights established in these European Union (EU) Directives.

These Directives form part of the "**Procedural Rights Roadmap**" adopted in 2009, which aims to strengthen the procedural rights of suspects and accused persons in criminal proceedings. It also covers the **right to interpretation and translation, the presumption of innocence and the right to be present at trial**, as well as **procedural safeguards for children who are suspects or accused persons**. The Roadmap was incorporated into the EU Stockholm Programme, within which the European Council highlighted that safeguarding the rights of suspects and accused persons is a fundamental value of the Union and essential to maintaining mutual trust among Member States.



DIRECTIVES' OVERVIEW

Directive 2012/13/EU on the **right to information** in criminal proceedings sets minimum rules for ensuring that suspects and accused must be promptly informed about (i) their procedural rights, (ii) the reasons for the arrest/accusation and (iii) given access to the case files throughout the EU.

Regarding the procedural rights, these should be promptly provided with information concerning at least the following:

- ✓ Access to a lawyer
- ✓ Any entitlement to free legal advice
- ✓ The right to be informed about the accusation
- ✓ The right to interpretation and translation
- ✓ The right to remain silent

Furthermore, upon arrest or detention, **a written Letter of Rights in clear and simple language must be given to the suspects or accused persons**, who must have the opportunity to read it and be allowed to keep it in their possession. This Letter must include, in addition to the rights mentioned above, the following:

- ✓ The right of 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;
- ✓ The maximum number of hours or days suspects or accused persons may be deprived of liberty before being brought before a judicial authority.

Model examples of Letter of Rights in criminal proceedings and in European Arrest Warrant (EAW) proceedings can be found in Annex 1 and 2 of the [Directive](#), respectively.

Suspects and accused must also be informed, in sufficient detail, of the criminal act they are suspected or accused of, so they can effectively exercise their defence rights and ensure fair proceedings. They must also be told the reasons for any arrest or detention, including the specific offence involved.

Lastly, they (and their lawyers) must receive free access to essential documents to challenge the lawfulness of arrest or detention, and to all material evidence (including exculpatory) held by authorities.



For a more detailed description please see the Fair Trials' Toolkit on the Right to Information Directive, available [here](#). For a brief presentation of the main points of Directive 2012/13/EU, please take a look at the EU Agency for Fundamental Rights' (FRA) reports "[Rights in practice: access to a lawyer and procedural rights in criminal and European Arrest Warrant proceedings](#)", and "[Rights of suspected and accused persons across the EU: translation, interpretation and information](#)" which include dedicated sections on the right to information. Providing standards overview, regional challenges and examples of promising practices the following report from the EU Project 'From law to practice: Strengthening procedural rights in police custody (ProRPC)' is also available [here](#).

Directive 2013/48/EU on the **right of access to a lawyer** lays down essential requirements on the rights of suspects and accused persons in criminal proceedings and in EAW cases. It applies from the moment a person is made aware by authorities that they are suspected or accused of an offence, until the criminal proceedings are concluded.

This Directive is largely based on the principles and standards established in the European Court of Human Rights case law, such as [Salduz v Turkey \(2008\)](#), according to which access to a lawyer from the first police interrogation is a fundamental requirement of a fair trial and that restrictions on this right will generally irretrievably prejudice the rights of the defence.

Article 3 (2) specifies that the accused or suspected persons have the right to access a lawyer without undue delay, from the earliest of the following:

Before the interrogation by the police or other law enforcement or judicial authority



When the authorities are carrying out certain investigative or evidence gathering acts

After the deprivation of liberty



When the person has been summoned to appear before a criminal court

Moreover, confidential communication with legal counsel, their effective participation during questioning, and their presence at key investigative acts must be safeguarded. It also requires that if a person's status changes from witness to suspect, questioning must stop immediately and the person must be informed of their rights, including access to a lawyer. For EAW proceedings, the Directive ensures access to a lawyer in the executing State and the ability to appoint one in the issuing State.

Certain temporary restrictions can be allowed in exceptional circumstances, notably when there is "an urgent need to avert serious adverse consequences for life, liberty or physical integrity in a given case" for actual or potential victims.

The Directive also allows suspects or accused persons to waive the right of access to a lawyer, provided the waiver is voluntary, informed, unequivocal, and can be withdrawn at any time.



For a more detailed explanation and concise overview of its main provisions, you may refer to the following materials: the FRA report "[Rights in practice: access to a lawyer and procedural rights in criminal and European Arrest Warrant proceedings](#)" and Fair Trials' [Toolkit on the Access to a Lawyer Directive](#).

Directive 2016/1919/EU on the **right to legal aid** establishes common minimum standards on access to state funded legal assistance for suspects, accused persons and requested persons in EAW proceedings. Its importance lies in guaranteeing equal access to justice and safeguarding the right to a fair trial.

This Directive is deeply intertwined with the Right of access to a lawyer Directive and serves the purpose of guaranteeing that same right, through public funding, i.e. funding by a Member State of the assistance of a lawyer, therefore enabling the exercise of the right of access to a lawyer and ensuring its effectiveness.

It applies to suspects or accused persons in criminal proceedings who benefit from the above-mentioned right of access to a lawyer pursuant to the respective Directive and meet one of the three additional criteria:

The persons are deprived of liberty.

Are required by law to be assisted by a lawyer in accordance with regional or national law.

Are required or permitted to attend an investigative or evidence gathering act.

It also applies to requested persons under an EAW who have the right to access a lawyer upon arrest by the executing State, as well as to persons who, while not being initially suspects or accused, became so during questioning.

To determine whether someone has sufficient resources to pay for its own lawyer within criminal proceedings, Member States can apply a means test, a merits test or both. In any event, the merits test is considered to be fulfilled in the following circumstances: (a) when a suspect or accused person is brought before a competent court or judge to decide on detention at any stage of the proceedings within the scope of this Directive; and (b) during detention.

Legal aid must be granted without undue delay, and at the latest:

Before questioning by the competent authority.

Before any investigative or evidence-gathering acts are carried out.



A more detailed description and implementation guidance regarding this Directive can be found in the [Commission Report to the European Parliament and the Council](#), as well as in specialised legal aid toolkits produced under EU funded projects and non-governmental organisations (for example, Fair Trials' and Legal Experts Advisory Panel's [Transposition toolkit](#) and [Legal Aid Directive Toolkit](#)).

SAFEGUARDING PROCEDURAL RIGHTS: PRACTICAL GUIDANCE FOR POLICE OFFICERS

In most cases, police officers represent the **first point of contact between suspects or accused persons and the criminal justice system**. For this reason, it is essential to ensure the effective respect and protection of procedural rights at this initial stage, as it lays the foundation for lawful proceedings, reduces the risk of procedural irregularities and influences the fairness of treatment in the subsequent phases of the criminal process. This Booklet specifically addresses issues arising during the pre-trial stage of criminal proceedings.

Field research carried out with prosecutors, lawyers and police officers working with suspects and accused during the initial stages of the criminal proceedings have identified key challenges in police officers' daily practice, which informed the development of the following guidelines.

Respect for every person's human rights is the foremost duty of every police officer, under all circumstances. This means treating every individual with dignity, respect and empathy, as well as refraining from all forms of violence, including subtle forms of psychological harm, pressure or intimidation. This is especially important during the pre-trial stages, where the presumption of innocence must be upheld at all times.

1.1. The right to information

How can police officers ensure respect for the right to information?

Suspects and accused persons must be informed promptly about their procedural rights, including:

- ✓ The right of access to a lawyer;
- ✓ The entitlement to free legal advice and the conditions for obtaining such advice in the respective jurisdiction;
- ✓ The right to be informed of the accusation;
- ✓ The right to interpretation and translation;
- ✓ The right to remain silent.

Article 3(2) of the Directive establishes that this information must be communicated orally or in writing, **using simple and accessible language**, and taking into consideration the particular needs of vulnerable suspects or accused persons. Article 4 stipulates that a written Letter of Rights must be provided, upon arrest or detention, incorporating the rights set out in Article 3, along with additional information and other rights applicable under national law.

The investigation carried out in this project pointed to the necessity of providing such **information in oral and written form**, as the moment of becoming a suspect or accused person can be stressful and overwhelming, leading to them often times forgetting the content of such declarations.

The oral communication of these rights should also include a more **detailed and tailored explanation of the respective rights** considering the level of tension and understanding of the suspect or accused. **Complex or legal jargon must be avoided.**

Moreover, if necessary, oral explanations must be given in different moments of the proceeding, ensuring that the suspect or accused has adequate opportunities to comprehend the information and seek clarification.

1.1.1. Letter of Rights

A written Letter of Rights must be provided upon arrest or detention (Article 4) and suspects or accused must have the time to read it carefully and keep it. The Letter of Rights must mention the rights referred above but also include information on the right of access to case files, to have consular authorities and one person informed, to urgent medical assistance and the maximum number of hours or days they may be deprived of liberty before being brought to a judicial authority, as these apply under national law. It shall also include information about the possibility to challenge the situation that the person is in and the available mechanisms.

This document must be written in simple and accessible language, and available in several languages. If the suitable language is not available, the information must be provided orally in an understandable language, and the correct Letter of Rights must be granted without undue delay.

As noted above, in addition to delivering the written document, information should also be **communicated and explained orally** to ensure that the suspect or accused fully understands the content.

In line with our findings and the information presented in the [Best Practices Handbook](#) by the Fair Project, it is not uncommon for suspects and accused persons to experience difficulties in understanding their rights when these are communicated through the Letter of Rights or explained orally using complex language or legal terminology, underscoring the need for information to be transmitted in a clear and intelligible manner.

A good practice and recommendation is to ask whether the person has any questions and be mindful of the tone and manner in which the information is conveyed, as this can significantly influence and affect comprehension.

While the right to interpretation and translation is referred to in this Directive, it is primarily established under [Directive 2010/64/EU](#). One of the recurring challenges identified concerns the inability to provide interpretation or translation without undue delay. This issue may be addressed by maintaining a **readily available pool of qualified interpreters**, with particular emphasis on the most commonly required languages, accessible to each police station.

1.1.2. Good practices and recommendations

- ✓ Oral clarifications from multilingual police officers at the time of an arrest.
- ✓ Multi-disciplinary development of a new Letter of Rights in several languages: colourful leaflet with essential information in day-to-day vocabulary, and an additional one specific to EAW proceedings.
- ✓ Different templates of Letters of Rights, adapted to different categories of person and/or proceeding. An illustrated version for illiterate persons, for example.
- ✓ Use an electronic case-handling system to "tick off" which rights they have informed the suspect about.
- ✓ Upon arrest or detention, suspects or accused persons should be allowed to inform a third party (by making a phone call, for example). In case they are children, inform their parents or legal guardians.
- ✓ Avoid trying to convince the suspect or accused to accept interpretation or translation of essential documents in English if they are not fluent.
- ✓ Guidance and training for internal alignment (through regulations) regarding the treatment of vulnerable persons, such as children, people with disabilities and elderly people, for example, allowing to provide better services.
- ✓ Child-friendly template for communication using multiple child-friendly formats and behavioural guidelines for information provision, as well as educational specialists or psychologists present during questioning.
- ✓ No further questions should be asked once the suspect or accused person has expressed their decision to remain silent.
- ✓ Enhance coordination among law enforcement agencies on procedural matters to ensure consistency, common standards, and harmonised practices within each country.

1.2. The right of access to a lawyer

The right of access to a lawyer is fundamental to the effective exercise of defence rights and directly influences the lawfulness and fairness of criminal proceedings as a whole. This right is recognised from the first possible stage until the end of criminal proceedings.

Suspects or accused must have access to a lawyer without unnecessary delay, from the earliest of the following points in time:

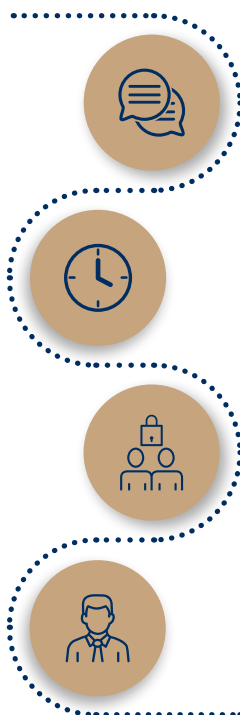
- ✓ Before they are questioned;
- ✓ When the authorities carry out investigative or evidence-gathering acts where the suspect or accused is required or permitted to attend, including identity parades, confrontations, or crime scene reconstructions;
- ✓ Without undue delay after deprivation of liberty;
- ✓ Where they have been summoned to appear before a court having jurisdiction in criminal matters, in due time before they appear before that court.

This right comprises its effective enjoyment so police officers must:

Facilitate communication

between suspects or accused persons and their lawyer, including through phone calls or video conferencing, for example

Ensure **confidentially** in all communications and meetings between suspects and accused and their lawyers



Respect the **time and space** for suspects and accused to meet with their lawyer

Guarantee the **presence and active participation of the lawyer** during questioning or interrogation

In exceptional cases and only during the pre-trial stage, Member States may **temporarily** limit the rights described in paragraph 3 of Article 3 of the Directive, but **only if it is strictly necessary** given the specific circumstances of the case, for one of the following compelling reasons:

A

Where there is an urgent need to avert serious adverse consequences for the life, liberty or physical integrity of a person.

B

To allow immediate action by investigators when crucial measures are needed to protect the criminal proceedings.

1.2.1. Good practices and recommendations



Explain to suspects or accused the importance to be assisted by a lawyer and the implications of not doing so, reassuring them about the right to legal aid

Ensure the means, time, space and confidentiality of communications between suspects and accused and their lawyers



Recognise lawyers with greater margins of intervention, allowing them to make requests, comments, and raise objections during police questioning

An online platform that connects lawyers and suspects or accused persons before their first interview by the police and/or investigative judge



A list of available lawyers should be provided, connected to a public line with the respective contacts

For persons arrested under EAW, if they request a specific lawyer from the issuing Member State, law enforcement authorities in the executing State are made aware of the request and the requested lawyer is informed



1.3. The right to legal aid

This Directive guarantees that those with limited financial means are able to exercise the right of access to a lawyer, and more importantly, safeguards the right to a fair trial and equality of arms in access to justice.

To ensure the effective exercise of this right, police officers must clearly **explain the procedures for obtaining free legal aid under the applicable jurisdiction, including eligibility criteria, cost arrangements and other relevant details.**

Inadequate or unclear explanations may cause a suspect or accused person to waive their right, potentially leading them to seek remedies later in the proceedings. Such situation may trigger consequences including prohibition on procedural actions, release from detention, exclusion of evidence, judicial review, and claims for compensation. In particular, **where the right to legal aid is not respected during the investigative pre-trial phase, statements or evidence obtained without legal assistance may be deemed inadmissible** in line with the [Salduz v Turkey \(2008\)](#) case.

1.3.1. Good practices and recommendations

- ✓ Establish an electronic system for random appointment of legal aid lawyers, ensuring prompt legal assistance for persons deprived of liberty and an efficient and transparent appointment procedure.
- ✓ Provide legal aid before questioning and extending it to EAW proceedings.
- ✓ Legal aid providers compile and make public informative lists of lawyers, including expertise, experience, and language skills, available at police stations, courts, and online.

FULL-PROOF Project

FULL-PROOF is a European Union co-funded project that aims to contribute to the streamlining of criminal justice procedures by comprehensively addressing breaches of procedural rights occurring in the initial stages of justice proceedings, concretely those in Directive 2012/13/EU, Directive 2013/48/EU, and Directive 2016/1919/EU.



If you want to know more about this project, please visit our website at:

www.full-proof.eu

The Consortium

Portugal



IPS_Innovative Prison Systems

Bulgaria



Bulgarian Helsinki Committee Organisation

Italy



University of Bologna

Slovakia



Academy of Police Force in Bratislava

Poland



Polish Platform for Homeland Security

Slovenia



Peace Institute

Romania



Police Academy 'Alexandru Ioan Cuza'





FULL-PROOF.EU

Co-funded by the European Union.

Views and opinions expressed are however those of the author(s) only and do not necessarily reflect those of the European Union or the European Commission. Neither the European Union nor the European Commission can be held responsible for them.

