



Guidance Booklet for Prosecutors 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
Prosecutors' role in ensuring procedural rights in pre-trial stages	08
1.1. The right to information, access to a lawyer and legal aid	08
1.2. Good practices and recommendations	10
FULL-PROOF Project	12

PURPOSE OF THE BOOKLET

This Booklet is designed to support prosecutors in their day-to-day interactions with suspects and accused persons. It provides clear and accessible information, along with suggestions drawn from established good practices to assist prosecutors safeguarding the rights 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](#)).

PROSECUTORS' ROLE IN ENSURING PROCEDURAL RIGHTS IN PRE-TRIAL STAGES

This Booklet is intended for prosecutors, who work in cooperation with the police and act as the leading authority in criminal investigations, assessing and gathering evidence in order to determine whether to pursue charges, and if so, which.

The core principles guiding prosecutors include acting in the public interest, independence, impartiality, and service to the law. In accordance with these principles, prosecutors play a central role in safeguarding the fundamental principles of justice and ensuring that criminal proceedings are conducted fairly and lawfully.

To this end, in the case preparation and in all contacts with suspects or accused persons, it is essential to respect every individual's human rights, ensuring that they are treated with dignity, integrity and respect. In this context, the presumption of innocence constitutes a fundamental procedural safeguard.

1.1. The right to information, access to a lawyer and legal aid

Regarding the **right to information**, the prosecution should guarantee that suspects and accused fully understand the rights transmitted by the police. To achieve this, the rights should be explained in a clear and accessible language, with the opportunity for suspects and accused persons to ask questions and receive answers in plain, day-to-day terms, 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.

The prosecution should also guarantee that the individual under arrest or detention received the **written Letter of Rights**, as it refers to the following rights:

- ✓ 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.

The **right of access to a lawyer** must be ensured upon arrest or detention, prior to questioning and throughout the criminal proceedings. The presence of a lawyer during questioning must be permitted and their effective participation allowed. Communication between suspects or accused with their lawyers must be facilitated to fulfil this right, including the provision of adequate time, appropriate space, necessary means (such as access to a telephone or videoconference, if permitted under national law), and full respect for the confidentiality of their communications.

Moreover, if an individual lacks the financial means to have a lawyer, the applicable mechanisms and conditions for **accessing legal aid** according to the respective national law must be clearly explained.

The **right to remain silent** must be respected when suspects or accused persons choose not to answer questions that may lead to self-incrimination. Once an individual has expressed their decision to remain silent, they should not be pressured to speak, and such silence must not be interpreted as evidence of guilt.

As managers of the case files, prosecutors should ensure that the suspect or accused persons, or their lawyers, are granted timely **access to the case materials** necessary to prepare the defence.

The prosecution acts as a key safeguard, an essential filter, for identifying any breaches of procedural rights at an early stage of the proceedings.

In this context, it should actively **ensure the effective enjoyment of all these rights and verify that suspects or accused persons have not been encouraged or advised to waive any of them.**

Where a breach is identified, the prosecution must take the **appropriate remedial measures** without delay and, where applicable, seeking the invalidation of procedural acts carried out as a result of, or in connection with, the violation.

Early intervention is essential to safeguard procedural fairness, that the investigation remains uncompromised and to avoid unnecessary delays in the proceedings.

1.2. Good practices and recommendations

The table below presents a selection of good practices and recommendations identified through desk research, along with key issues emphasised during field research conducted as part of this project. These suggestions are intended to support prosecutors in upholding procedural rights and ensuring fair and effective criminal proceedings.

Good Practices and Recommendations for Prosecutors



Avoid asking further questions or applying pressure if a suspect or accused person has indicated their decision to remain silent

Ensure that suspects or accused persons, and their lawyers, receive the case files in time to prepare an effective defence



Guarantee that suspects or accused persons who do not speak a common language, even if they have some knowledge of English, receive interpretation in a language they fully understand, without pressuring them to accept an English version

Secure the presence of a lawyer during the first questioning for suspects or accused persons who are particularly vulnerable (e.g., have mental or physical conditions, disabilities, or are illiterate)





Confirm access to psychological and physical health support for vulnerable suspects or accused persons to safeguard their well-being

Ensure the presence of a psychologist during the questionings of children who are suspects or accused of committing a crime



Act with sensitivity when the case involves children, ensuring that proceedings are conducted in a way that takes their specific needs into account

Be proactive in identifying breaches of procedural rights and taking appropriate remedial measures at the early stages of the proceedings



Verify that all evidence has been collected in full compliance with basic human and procedural rights

Do not use any information provided by a suspect or accused before they were informed of their procedural rights



Attend or promote regular training to maintain up-to-date knowledge, share good practices, and ensure compliance with procedural rights



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.



Co-funded by
the European Union

