



# Guidance Booklet for Suspects and Accused Persons on the Right to Information, Right of Access to a Lawyer and Right to Legal Aid

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# PURPOSE OF THE BOOKLET

This Booklet is designed to support suspects and accused persons navigating through the initial stages of criminal proceedings. It provides clear and accessible information and suggestions drawn from established good practices. It offers concrete guidance to assist suspects and accused persons 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.



# 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](#)).

# I AM A SUSPECT OR ACCUSED PERSON IN A CRIMINAL PROCEEDING

## 1.1. What are my rights?

### ✓ Right to be treated with respect and dignity

All the European Union Member States are under the obligation to treat every person with dignity. This includes showing respect for all individuals and their specific circumstances, exercising care in handling the case, and providing and explaining all information in a clear, understandable, and respectful manner.

### ✓ Right to remain silent

All the persons suspected or accused of committing a crime have the right to refuse to give testimony or answering any questions, ensuring that there is no self-incrimination.

## ✓ Right to the presumption of innocence

Every person has the fundamental right to be presumed innocent until proven guilty from the moment that it is suspected or accused of having committed a crime until the final decision has become definitive.

## ✓ Right to information in a clear way

The responsible authorities shall provide you with information about your rights, either written or orally, and the nature and reasons for the suspicion or accusation in a clear and understandable way, taking into account your individual needs to ensure that you fully understand it.

### This right includes information on:

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

**If you are arrested or detained, you must be provided with a written Letter of Rights in a language you understand.** It should be written in clear, everyday language, so that you can fully understand and effectively exercise your procedural rights and you should be able to keep it.

**The Letter of Rights must include information on these rights as they apply under national law:**

- 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.

This document must also contain information on the possibilities available to you for challenging the lawfulness of the arrest, obtaining a review of the detention or making a request for provisional release.

#### **Right to translation and interpretation**

If you do not speak the language of the country where the criminal proceeding is taking place, you have the **right to request an interpreter and the translation of the most important case documents**, free of charge.

You should not be pressured to accept interpretation in English (or any other language) if you are not fluent or do not understand it, and you are free to refuse it.

The respective Member State is under the obligation to provide, without delay, with interpretation during criminal proceedings before investigative and judicial authorities, including during police questioning, all court hearings and any necessary interim hearings.

The interpreter must provide accurate and clear interpretation, ensuring sufficient quality to ensure that the proceedings are fair, that you understand the case against you, and that you can fully exercise your right of defence.

## ✓ Right to have a lawyer

All suspects and accused persons have the right to be assisted by a lawyer from the first stage of police questionings until the end of criminal proceedings. This includes the **right to sufficient time, an appropriate space, and privacy to communicate with your lawyer, in full respect of the principle of confidentiality**. It also includes the opportunity for your lawyer to play an active role during questioning and throughout the entire proceedings. Access to legal counsel ensures that you can effectively exercise your defence rights and receive guidance throughout the proceedings.

In exceptional cases during the pre-trial stage, and in addition to limitations based on geographical remoteness, Article 3(6) of Directive 2013/48/EU allows **temporary restrictions on access to a lawyer, strictly limited to:**

**A**

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

**B**

Where immediate action by the investigating authorities is imperative to prevent substantial jeopardy to criminal proceedings.

Recital 31 further clarifies that during these temporary restrictions, authorities may question suspects or accused persons without a lawyer present **only** if they inform them of the (exercisable) right to silence, limit questioning to the minimum gathering of information needed to avert serious harm to life, liberty and integrity, and ensure no prejudice to defence rights (e.g. self-incrimination privilege).

## ✓ Right to legal aid

Everyone has the right to a defence. If you cannot afford a lawyer of your own choosing, the relevant Member State must **provide legal assistance free of charge**, ensuring that you can effectively exercise your right to a fair trial.

To ensure the effectiveness of this right, authorities must **inform you of the eligibility criteria, conditions and all relevant details** established under national law.

### References and additional resources:

European Convention on Human Rights - [https://www.echr.coe.int/documents/d/echr/convention\\_ENG](https://www.echr.coe.int/documents/d/echr/convention_ENG)

Charter of Fundamental Rights of the European Union - [https://www.europarl.europa.eu/charter/pdf/text\\_en.pdf](https://www.europarl.europa.eu/charter/pdf/text_en.pdf)

Directive on the presumption of innocence - <https://eur-lex.europa.eu/eli/dir/2016/343/oj/eng>

Directive on the right to interpretation and translation in criminal proceedings - <https://eur-lex.europa.eu/legal-content/EN/TXT/?qid=1496161440830&uri=CELEX:32010L0064>

International Covenant on Civil and Political Rights - <https://www.ohchr.org/en/instruments-mechanisms/instruments/international-covenant-civil-and-political-rights>

Universal Declaration of Human Rights - <https://www.un.org/en/about-us/universal-declaration-of-human-rights>

## 1.2. What can I do if my rights have not been respected?

If any of your procedural rights have been violated, you should first contact your lawyer and explain the situation.

As an initial step, you or your lawyer should seek remedy before the competent national courts. If this does not work, a complaint can be submitted to the European Commission concerning the breach, which may lead to proceedings against the Member State concerned, as is the institution responsible for taking that Member State to court.

### Under national law, one or more of the following options may apply:

- filing a complaint against the police officer;
- inadmissibility complaint;
- application because of violation of the rights of the defendant;
- complaining in the main proceedings;
- request for annulment;
- appeal complaint;
- claiming that testimony was given under duress or threat;
- claiming there was a procedural violation;
- motion to the supervising prosecutor.

For further information, please check out:

[How to report a breach of your rights](#)

### 1.3. What minimum conditions of detention must be respected if I am arrested or detained?

Member States must ensure that all persons deprived of liberty are treated with respect for their human dignity and are not subjected to torture or to inhuman or degrading treatment. This is established in Articles 1 and 3 of the [European Convention on Human Rights](#) (ECHR), Articles 1 and 4 of the [Charter of Fundamental Rights of the European Union](#) (the Charter) and Rule 1 of [European Prison Rules](#). Additionally, Rule 4 clarifies that **prison conditions violating human rights cannot be justified by a lack of resources**. Any restriction on the exercise of rights must be provided for by law and comply with the principles of necessity and proportionality, in line with Article 52 of the Charter and Rules 2 and 3 of European Prison Rules.

In accordance with the [Commission Recommendation on procedural rights of suspects and accused persons subject to pre-trial detention and on material detention conditions](#), the following minimum detention standards are highlighted as particularly relevant, among others. References to the corresponding European Prison Rules are also provided, such as:

Allocation	<p><b>Rule 17</b></p> <p>Pre-trial detainees must be allocated separately from convicted persons. Women must be separated from men and children must be separated from adults, unless otherwise determined in the child's best interests.</p>
Accommodation	<p><b>Rule 18</b></p> <p>Member States should ensure that each person has a minimum personal space of at least 6m<sup>2</sup> in single cells and 4m<sup>2</sup> in shared cells. Where the available space falls below the 3m<sup>2</sup> threshold, there is a strong presumption of a violation of Article 3 of the ECHR. Personal space calculations should include furniture but exclude sanitary facilities. Access to natural light and fresh air in the cells must also be guaranteed.</p> <p>Overcrowding continues to affect detention facilities in the majority of European countries, putting this standard at risk.</p>

Hygiene and sanitary conditions	<p><b>Rule 19, 20 and 21</b></p> <p>Sanitary facilities must be accessible at all times, and privacy should be ensured, including effective physical separation from living areas in shared cells. Hygiene standards must be maintained through regular cleaning and disinfection. Basic sanitary items, including towels, must be provided, and warm running water must be available. Appropriate and clean clothing and bedding must also be provided.</p>
Nutrition	<p><b>Rule 22</b></p> <p>Food must be prepared and served under hygienic conditions and provided in sufficient quantity and quality to meet persons deprived of liberty nutritional needs. Age, disability, health, physical condition, religion, culture and the nature of their work must be taken into account. Drinking water must be available at all times.</p>
Time spent outside the cell and outdoors	<p><b>Rule 27</b></p> <p>Persons deprived of liberty must be allowed a reasonable amount of time outside their cells to exercise and participate in recreational activities, ensuring an appropriate level of human and social interaction.</p>
Healthcare	<p><b>Rule 39 and 47</b></p> <p>Timely access to medical care, including psychological and psychiatric support, to maintain their mental and physical health must be provided.</p>
Contact with the outside world	<p><b>Rule 24</b></p> <p>Persons deprived of liberty must be allowed visits from family members and other persons, such as legal representatives, social workers, and medical practitioners, and to communicate with them via telephone or video calls.</p>

Legal assistance	<b>Rule 23</b> Effective access to a lawyer must be ensured, and the confidentiality of all communications must be respected.
Children and vulnerable persons	<b>Rule 35 and 46</b> In the case of children, their best interests must always be the primary concern. Vulnerable persons must receive appropriate care, suited for their specific needs.

For more information on detention conditions, please see this database that compiles and monitors information on some detention issues:

**[Unpacking criminal detention rules and regulations across the EU](#)**

#### **Other references:**

**[Key Council of Europe Conventions and Recommendations](#)**

**[Council of Europe Conditions of Detention – Thematic Factsheet](#)**

**[PRI Short Guide to the European Prison Rules](#)**

# 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](http://www.full-proof.eu)

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