



**Guidance Booklet  
on the Right to  
Information, Right of  
Access to a Lawyer  
and Right to Legal Aid  
concerning Children  
and Vulnerable Persons**

# Contents

<b>Purpose of the Booklet</b>	<b>03</b>
<b>Directives' Overview</b>	<b>04</b>
<b>Children and vulnerable persons in criminal proceedings</b>	<b>08</b>
Directive 2016/800/EU	11
Core principles behind the Directive	13
1.1.1. Best interest of the child	13
1.1.2. Effective participation	16
2013 Recommendation - Vulnerable persons within criminal proceedings	18
<b>FULL-PROOF Project</b>	<b>20</b>

# PURPOSE OF THE BOOKLET

This Booklet is designed to offer judicial actors, prosecutors, police, and other criminal justice practitioners a quick and practical overview of key European Union (EU) procedural rights instruments for vulnerable persons and children, starting with Directives 2012/13/EU (right to information), 2013/48/EU (access to a lawyer), and 2016/1919/EU (legal aid) and including Directive 2016/800/EU on procedural safeguards for children who are suspects or accused and the 2013 Recommendation on procedural safeguards for vulnerable persons suspected or accused in criminal proceedings.

It provides clear, practical answers to issues that may arise in cases involving vulnerable persons and children and is intended primarily for those who handle cases from initial police contact through the pre-trial and trial stages. It illustrates how special measures for these groups, arising from age, disability, mental or physical conditions, or other factors, operate in real cases, enabling practitioners to uphold best interests, ensure effective participation, and take account of individual vulnerabilities.

Lastly, it may also be useful to child protection services, legal aid providers and training coordinators who wish to integrate EU procedural rights standards for vulnerable groups into everyday practice, case management and professional development.



# 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](#)).

# CHILDREN AND VULNERABLE PERSONS IN CRIMINAL PROCEEDINGS

Children and other vulnerable persons (e.g. due to age, disability, mental or physical conditions) suspected or accused in criminal proceedings require distinct or heightened safeguards, ensuring their **comprehension, best interests** and **participation** through specialised measures like individual assessments, medical examinations and child-friendly procedures.

These additional considerations appear in the general procedural safeguards’ Directives (2012/13/EU, 2013/48/EU, 2016/1919/EU) via vulnerability adaptations (see tables 1 and 2 below) but also have their own dedicated instruments: Directive 2016/800/EU and 2013 Recommendation on procedural safeguards for children and for vulnerable persons, respectively, who are suspects or accused in criminal proceedings. These specific instruments will be addressed in the following section.

**Table 1:** Explicit references to **children** in Procedural Safeguards Directives

Legal instruments	Children references
Directive 2012/13/EU (information)	<p><b>Recital 26:</b></p> <p>Authorities must adapt information provision for suspects unable to understand due to <b>youth</b>, mental or physical conditions, or similar factors.</p>

<p>Directive 2013/48/EU (access to a lawyer)</p>	<p><b>Recital 55:</b></p> <p>Child-friendly safeguards and notifications: The Directive promotes Council of Europe (CoE) child-friendly justice guidelines; ensures children understand waiver consequences; notifies parental responsibility holder promptly upon detention (or suitable adult if contrary to best interests); limits deferrals, prohibits incommunicado detention for children.</p> <p><b>Article 5(2):</b></p> <p>When a child is deprived of liberty, the holder of parental responsibility must be informed as soon as possible of the deprivation and reasons, unless contrary to child’s best interests (then another appropriate adult).</p>
<p>Directive 2016/1919/EU (legal aid)</p>	<p><b>Recital 29:</b></p> <p>Upholds children’s rights: Directive guarantees rights without discrimination, respecting the European Charter of Fundamental Rights (the Charter) and the European Convention on Human Rights (ECHR) protections including “the rights of the child” alongside fair trial, presumption of innocence and defence rights.</p>

**Table 2:** Explicit references to **vulnerable persons** in Procedural Safeguards Directives

<p><b>Legal instruments</b></p>	<p><b>Vulnerable persons references</b></p>
<p>Directive 2010/64/EU (interpretation and translation)</p>	<p><b>Recital 27:</b></p> <p>Authorities must ensure physically impaired or otherwise weak-positioned persons (affecting communication/understanding) can effectively exercise rights by identifying vulnerabilities and taking appropriate steps (e.g. adaptations) for fair proceedings.</p>

Legal instruments	Vulnerable persons references
Directive 2010/64/EU (interpretation and translation)	<p><b>Article 2(3):</b></p> <p>The right to interpretation (...) includes appropriate assistance for persons with hearing or speech impediments.</p>
Directive 2012/13/EU (information)	<p><b>Recital 26:</b></p> <p>Authorities must adapt information provision for suspects unable to understand due to youth, mental or physical conditions, or similar factors.</p> <p><b>Article 3(2):</b></p> <p>Member States must provide info orally and in writing in simple language, considering particular needs of vulnerable suspects or accused.</p>
Directive 2013/48/EU (access to a lawyer)	<p><b>Recital 51:</b></p> <p>Duty of care for weak-positioned suspects: Authorities must facilitate effective exercise of lawyer access or third-party notification rights for vulnerable persons by identifying vulnerabilities and implementing appropriate safeguards.</p> <p><b>Article 13:</b></p> <p>Member States must ensure that the particular needs of vulnerable suspects and vulnerable accused persons are taken into account in the application of this Directive.</p>
Directive 2016/1919/EU (legal aid)	<p><b>Article 9:</b></p> <p>Member States must ensure that the particular needs of vulnerable suspects, accused persons and requested persons are taken into account in the implementation of this Directive.</p>

## Directive 2016/800/EU

This Directive sets minimum EU-wide rules ensuring tailored protections for children, including the right to information, mandatory legal assistance, individual assessments, and the child's best interests as a primary consideration.

Children, i.e. persons below the age of 18, who are suspects or accused persons in criminal proceedings, or become such throughout police questioning, or who are requested persons in EAW proceedings, are granted several procedural safeguards and rights that Member States have to enforce.

Regarding the right of information in particular, children must be informed promptly of their rights under the Information Directive (2012/13/EU), and general aspects of the proceedings.

The type of information that needs to be provided in a simple and accessible language can be split into three "stages":

**Promptly**, they must be informed of their:

- ✓ Right to have the holder of parental responsibility informed and be accompanied by them;
- ✓ Right to assistance by a lawyer;
- ✓ Right to privacy;
- ✓ Right to legal aid.

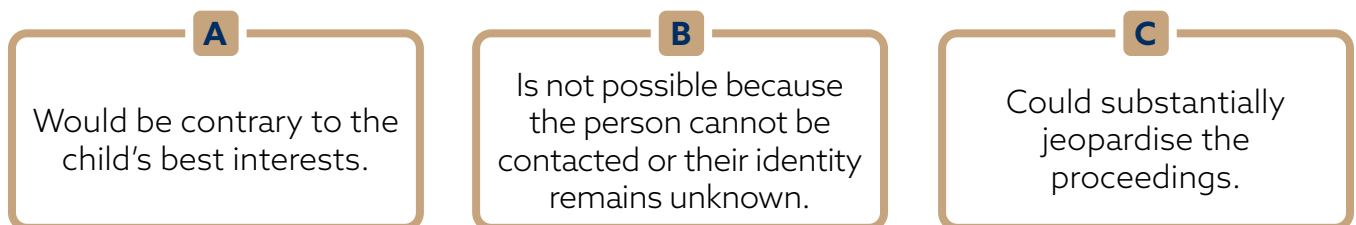
**At the earliest possible stage of their proceedings**, they should be informed of additional rights, including the:

- ✓ Right to an individual assessment;
- ✓ Right to a medical examination;
- ✓ Right to limitation of deprivation of liberty and use of alternative measures;
- ✓ Right to be accompanied by the holder of parental responsibility during court hearings;

- ✓ Right to appear in person at trial;
- ✓ Right to effective remedies.

**Upon deprivation of liberty**, they should be informed of the right to specific treatment during such deprivation.

Instead of the information above being provided to the holder of parental responsibility, it may be granted to another adult, nominated by the child, if disclosing it to the former:



Such person shall also be allowed to accompany the child during court proceedings and other stages of the process, including during police questioning.

Furthermore, besides safeguarding the child's **access** to a lawyer, this Directive focuses on the **assistance** of a lawyer. As explained in the EU Project "ProRPC" [Factsheet](#), this means that *the lawyer should be allowed to have **an active role** and to **participate** during all steps of the proceedings*, rather than being merely present.

As such, children have the right to:

- ✓ Meet in private and communicate with a lawyer including prior to questioning by the police;
- ✓ Be assisted by a lawyer during questioning and during investigative acts.



For additional descriptions of the rights established in this Directive and its key issues check out the [CCBE Reference guide to assist EU defence practitioners](#) and Fair Trials' Children Directive [toolkit](#).

Additionally, for a more detailed analysis of this Directive's safeguards, *raison d'être* and interplay with principles and norms enshrined in a wider body of European and International standards, see FRA's [Handbook on European law relating to the rights of the child](#) and the International Juvenile Justice Observatory [White Paper](#).

## Core principles behind the Directive

### 1.1.1. Best interest of the child

The best interest of the child is mentioned multiple times throughout the Directive and draws from other important legal instruments, such as the Convention on the Rights of the Child (CRC) and the Charter. Both establish that *in all actions concerning children (...), the best interests of the child shall be a primary consideration*. What exactly consists of best interest must be assessed on a case-by-case basis, as it is not a static concept, but rather a flexible and moving one.

In particular, [General Comment No.14 on the right of the child to have his or her best interests taken as a primary consideration \(art. 3, para. 1\) by the Committee on the Rights of the Children](#) sheds significant light on how to interpret this principle (simultaneously a rule of procedure and a right) and examine its applicability.

#### How should the best interests of a child be assessed?

**A**

Ensure the child's right to be heard and assess the weight to be given to the child's views

Children must be given a genuine opportunity to express their views and have those views given due weight according to their age, maturity and understanding. The greater the child's level of understanding, the more their views should guide the determination of their best interests.

**B**

## Identify the relevant best interest elements

Once the child has been heard, all relevant elements of the child's best interests must be identified. These elements are non-exhaustive and must be adapted to the individual child. They include:

- The child's views;
- The child's identity;
- Preservation of family environment and relationships;
- Care, protection and safety;
- The child's situation of vulnerability;
- The child's rights to health, education and development.

**C**

## Gather comprehensive information on the child's situation

Professionals, including lawyers, must acquaint themselves with the child's:

- Physical and mental health;
- Emotional and psychological development;
- Social environment, education and living conditions.

This may require consultation with social workers, psychologists, teachers, parents or guardians.

**D**

Balance the identified elements, paying specific attention to vulnerability and protection considerations

Where multiple elements or competing interests exist, the relevant actors must:

- ✓ Weigh each element carefully;
- ✓ Explain how conflicts were resolved;
- ✓ Demonstrate why the chosen outcome best serves the child.

Upon such balance, particular weight must be given to situations of vulnerability and protection needs. An example of such a conflict is forwarded by the CRC: The child's interest in maintaining family ties may be constrained by the obligation to protect the child from violence or abuse within the home.

Both immediate effects on the child's well-being and long-term impacts on development should be considered, and assessments should be reviewed and updated as circumstances and needs evolve.

**E**

Apply procedural safeguards to the assessment process

The assessment must be conducted through a process that is:

- ✓ Fair and child-friendly, ensuring the child understands the proceedings and is communicated with in an age-appropriate manner;
- ✓ Timely and responsive to the child's needs;
- ✓ Supported by legal assistance or representation;

- ✓ Multidisciplinary, involving social workers, psychologists, or other relevant professionals when needed;
- ✓ Transparent, with decisions that are reasoned, documented, and open to review;
- ✓ Protective of the child's privacy and confidentiality.

### 1.1.2. Effective participation

This principle is embedded in international and European law through fair trial guarantees and child-friendly procedures, notably under the United Nations CRC, the ECHR and [ECtHR case law](#). While Directive 2016/800/EU does not expressly refer to "effective participation", it operationalises it through binding safeguards such as the right to information, mandatory legal assistance, individual assessment and the right to be present and participate at trial. Children must also be enabled to understand the proceedings and what is at stake for them.

#### How can the principle of effective participation of the child be ensured in legal proceedings?

Relevant authorities/ professionals should:

- A** Make sure that the child suspect or accused understands the charges and possible penalties against them;
- B** Conduct the proceedings in an understanding and child-friendly atmosphere so as to allow the child to express freely;
- C** Take into account seriously and give due respect to what the child expressed, according to their age, maturity and the circumstances of the case;
- D** Provide the child with all necessary information and explanations concerning the possible consequences of their views and opinions;
- E** Apply procedural safeguards to protect participation (e.g. ensure confidentiality, privacy, etc.).

For additional examples of what the child should be informed about check out paragraph 46 of Fair trials' [toolkit](#).

As provided in the [FRA Handbook on European law relating to the rights of the child](#), other concrete examples of effective participation requirements include:

- ✓ The child's presence during the hearings;
- ✓ Holding of in camera hearings;
- ✓ Limiting trial publicity;
- ✓ Limited formality of court sessions.



For a more detailed overview of the principles inherent to the child rights within criminal proceedings, including **dignity**, **non-discrimination** and **rule of law**, take a look at the [CoE Guidelines of the Committee of Ministers of the Council of Europe on child-friendly justice](#) and [General Comment No. 24 \(2019\) on children's rights in the child justice system by the Committee on the Rights of the Children](#).

As for an in-depth description of the role that lawyers play in safeguarding the above-mentioned rights and principles throughout the several stages of the proceedings (arrest and police interrogation, pre-trial detention and court proceedings), see the practical implementation section of the Fair trials' [toolkit](#).

Keeping in mind that the key objective of juvenile justice according to Article 40 of the CRC is to **reintegrate children into society**, professionals in the criminal justice systems that directly or indirectly deal with child suspects or accused should pay attention to the following aspects:

- ✓ Children should not be detained together with adults;
- ✓ Detention must be a measure of last resort.
  - Non-custodial alternatives that safeguard the child's best interests and support their reintegration into society (Article 40 (1) of the CRC) should be prioritized, for example: "care, guidance and supervision orders; counselling; probation; foster care; education and vocational training programmes".

## 2013 Recommendation - Vulnerable persons within criminal proceedings

The [Commission Recommendation of 27 November 2013 on procedural safeguards for vulnerable persons \(suspects or accused\) in criminal proceedings](#) complements the EU Roadmap by urging Member States to enhance rights for vulnerable persons (due to age, mental or physical conditions, or disabilities) who cannot fully understand or participate effectively. It remains, however, non-binding soft law. Nevertheless, references made in the procedural safeguards Directives are binding and enforceable.

### Key elements of the Recommendation:

It applies from the moment a person is suspected of having committed a crime until the conclusion of the proceedings.

Addresses the prompt identification of vulnerable persons through independent medical examinations, assessing vulnerability degree, specific needs, and appropriateness of measures.

Includes specific **procedural rights**, notably:

- A** Non-discrimination
- B** Presumption of vulnerability
- C** Information (in an accessible manner and to have a legal representative or an appropriate adult nominated by the vulnerable person or by the competent authorities to assist that person present at the police station and during court hearings)
- D** Access to a lawyer (which must not be waived where the vulnerable person is unable to understand and follow the proceeding)
- E** Medical assistance

- F** Audiovisual recording of questioning

---

- G** Protection against unnecessary deprivation of liberty

---

- H** Privacy and data protection

The recent **[Court of Justice of the EU Baralo ruling](#)** clarified the scope of the right of access to a lawyer and vulnerable persons' right to legal aid. To know more check out **[Eurocrim](#)**.

# 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)

## 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.

