

**Right to information in criminal proceedings – frequently asked questions**

**Why is action at European level needed on the right to information for suspects?**

This right to information about basic fair trial rights is a necessary step to all other fair trial rights. EU citizens are entitled to move and reside freely within the territory of all 27 EU Member States. More and more of them travel, study and work outside their home country (for example, an average of 47% of Germans, 34% of UK nationals and 16% of Italians take a holiday in another Member State). With this freedom comes a greater chance of finding themselves involved in criminal proceedings in another country. If this happens, at home or abroad, every suspect must receive a fair trial that respects basic procedural rights like consulting a lawyer or having interpretation if needed. If you do not know that these are basic rights to which everyone is entitled, you may not insist upon them. Failure by the police to respect those rights will jeopardise the fairness of criminal proceedings and may lead to miscarriages of justice. Immediate information about basic rights is essential because suspects are most vulnerable to intimidation and ill-treatment just after they have been arrested. This is best achieved with a Letter of Rights.

**How well is this right to information respected today?**

The European Court of Human Rights in Strasbourg says that authorities must make sure suspects are informed of their fair trial rights. These rights are not meant to be only theoretical but also to be effective in practice.

However, Member States still differ in their rules, the amount of information they give and how they provide it.

This means that the way suspects are informed of various fair trial rights depends on what country they are in: a suspect will be told of their right to interpretation orally in Belgium, in writing in Hungary and through a Letter of Rights in Germany. 15 countries only tell suspects about their right to remain silent orally.

The impact of the Letter of Rights to people in other countries depends on factors like translation: some EU countries provide a comprehensive Letter of Rights but only provide oral translations of it to people who cannot understand the language.

These varying standards and approaches can lead to suspects not being given all or any of the information they need for their defence.

This can hamper cooperation between different national authorities. Without minimum common standards to ensure fair proceedings, judicial authorities will be reluctant to send someone to face trial in another country. As a result, EU measures to fight crime – such as the [European Arrest Warrant](#) – may not be fully applied. 14,000 European arrest warrants were issued in 2008, up from 6,900 in 2005.

**What is the effect of the proposal?**

It would oblige Member States to make sure suspects receive two types of information:

- about the fair trial rights they enjoy under the European Convention on Human Rights (ECHR);
- about the case against them.

1. When someone is arrested, Member States will be obliged to give them written information about their rights in everyday language – in the form of a Letter of Rights (see annex of IP for a model letter proposed by the Commission).

Member States would also have to ensure that they or their lawyers have access to documents in the case-file held by the police, prosecution or court. This right exists in all but three EU Member States, but the ease with which citizens can avail of it varies significantly.

This is part of the Commission's work to provide common standards for procedural rights in all criminal proceedings, including cross-border proceedings such as those based on a European Arrest Warrant.

**What information is in the Letter of Rights?**

The Letter of Rights, with which persons will have to be provided promptly when they are arrested, will contain practical details about their right:

- to a lawyer;

- to be informed of the charge and, where appropriate, to have access to the case-file;
  - to interpretation and translation for those who do not understand the language of the proceedings;
  - to be brought promptly before a court following arrest.
2. The Letter of Rights does not create these rights – they come from the [EU Charter of Fundamental Rights](#) and the ECHR. The letter reflects the current minimum standard of fair trial rights that already apply across the EU.

EU countries are free to draw up their own Letters of Rights in an appropriate range of foreign languages as long as they include accurate information about these four core fair trial rights.

As a high level of consistency in the information in the Letters of Rights throughout the EU will make it easier for citizens to know their rights, the proposal contains a model Letter of Rights in all official EU languages. This is meant to help Member States design their Letters of Rights.

EU countries are encouraged to go further by including information about more rights or rights going beyond these four minimum rights.

### **Do any countries already use a Letter of Rights to inform suspects of their rights?**

The European Commission first called on EU countries to use Letters of Rights in 2004. At that time, only one country (Luxembourg) provided a Letter of Rights, as defined in today's proposal, which gave information on the rights to legal defence and the right to be immediately examined by a doctor.

Since then, more countries have introduced, expanded and provided translation for their Letters of Rights. Germany adopted its Letter on 1 January 2010 (available in 48 languages) and the Netherlands started on 1 April, 2010.

To be truly effective, Letters need to be given to arrested suspects automatically because not everyone knows if they can ask for them. They should be written in simple language and translated into several languages.

The EU proposal will help other countries learn from existing good practice – and also encourage consistency between different systems so that citizens know what to expect.

### **Won't this be a drain on resources for justice authorities? How will the letter be shown to suspects in practice?**

Police officers will not have to carry 23 or more different linguistic versions of the Letter of Rights with them. It is expected that a Letter of Rights will be issued at the police station. They can be stored on the station's computer and then issued in the correct language.

This is what already happens in 12 Member States. Germany produces the letter in 48 languages, the UK in 44, Sweden in 42, Austria in 20, but the Czech Republic in only one.

The Commission is providing a template in all EU languages to limit translation costs.

### **Are there examples of cases where the proposal would have made a difference?**

Independent organisations have provided examples of EU citizens who were not sufficiently informed of their basic fair trial rights and the case against them. Suspects could not adequately defend themselves, leading to allegations of miscarriages of justice:

- Two brothers from one EU Member State were arrested on drugs charges in another Member State. They were interrogated without lawyers, forced to sign confessions in the language of the second country, which they did not understand. They were also not shown the charges against them for over a year (there are three EU Member States where this right does not yet exist and a further eight which only provide information about this right orally). **They were unaware of their right to legal assistance and an interpreter.** Nevertheless, they were convicted to six years' imprisonment.
- Following street disturbances during a major football tournament, the national of another EU country was arrested, along with 13 others. He denied involvement, but was not able to call his alibi as a witness. He did not know the charge or allegations against him when he was arrested. He was tried with the others and convicted under "emergency" powers, less than 48 hours after the arrests. **It was only when he happened to peer over the shoulder of the interpreter, 20 mi-**

**notes before the end of the trial itself, that he saw the words “leading a riot” in his native language and realised that this was what he had been charged with.**

**He was not however informed of a crucial right under the emergency legislation:** a one-month stay of proceedings to prepare a defence, in cases where, for example, identification was in issue. Together with the 13 other defendants he was only given brief access to a court-appointed lawyer on the day of his trial, who did not tell him about the possibility to seek a stay of proceedings. He also shared an interpreter at trial (none was given before) with the other 13 defendants. It is likely that this situation could have been prevented had he been advised in a timely way of his rights.

- A national of one Member State was charged with a drug offence in another Member State while travelling home from a third Member State when an acquaintance was found with cocaine in his bags on arrival at the airport. There were no drugs found in her bags.

During her trial, she did not know that she was testifying as a co-accused. She thought she was giving evidence as a witness for the prosecution. **She did not know that she was entitled to request the assistance of a translator or interpreter** (in 10 EU Member States, suspects are only informed of this right orally). Following her conviction, she spent four years in jail before being pardoned.

### **Is there already a specific right to information enshrined in law?**

[The European Convention on Human Rights](#) (ECHR – Articles 5(2) and 6(3) (a)) obliges criminal justice authorities to **inform suspects of the nature and cause of the accusation** so they understand the charges and can prepare their defence.

The ECHR does not explicitly mention the **right to information about fair trial rights**, but the case-law of the Strasbourg Court requires judicial authorities to take proactive measures informing the suspect about the right to see a lawyer and take all reasonable steps to ensure that a suspect is fully aware of his rights.

### **What if countries already have a standard of protection higher than this measure?**

The measure will implement common minimum standards in the EU. All countries will have to live up to these standards, but a country should not lower them if they have higher standards.

The Directive proposed today includes a non-regression clause to this effect (article 10).

### **What is the legal basis for EU law in this area?**

Article 82(2) of the [Treaty on the Functioning of the European Union](#) says that the European Parliament and the Council may establish minimum rules to make sure judicial authorities in EU countries recognise and execute each others' judgments and judicial decisions.

It also says that they can take measures to ensure that police and judicial cooperation in criminal matters carries no risk to the rights of individuals in criminal procedures.

### **What else will the Commission do to ensure the fair trial rights across the EU?**

This proposal is the first step in a series of measures in the procedural rights roadmap, adopted by the Council on 30 November 2009. This invites the Commission to put forward proposals on a "step by step" basis ([IP/10/447](#)). The roadmap, which is an indicative list of measures, suggests the following:

- the right to interpretation and translation;
- **information on rights and information about the charges;**
- legal advice, before trial and at trial, and legal aid;
- the right for a detained person to communicate with family members, employers and consular authorities, and;
- protection for vulnerable suspects.

This proposal seeks to translate Measure B into legislation, in accordance with the roadmap.

### **The timetable: what happens next?**

The proposal will be discussed within the European Parliament and among EU governments. The European Parliament's [Committee on Civil Liberties, Justice and Home Affairs](#) (LIBE) will vote on it, followed by a vote in full plenary session.

For figures showing the number of foreigners per Member State, see

<http://epp.eurostat.ec.europa.eu/tgm/table.do?tab=table&init=1&plugin=0&language=en&pcode=tps00157>

## ANNEX

### Provision of information on fair trial rights in June 2009:

**N.B. Some Member States have introduced letters and may have changed systems since this survey was carried out.**

#### Key:

**O:** Oral provision of information

**W:** Provision of information in writing by other means than Letter of Rights<sup>1</sup>

**LR:** Letter of Rights<sup>2</sup>

**N/A:** Right not applied in practice

**NO:** No right

Country	Right to access evidence	Right to remain silent	Right to call expert/witness	Right to translation	Right to interpretation	Right to legal assistance
Austria	<u>O + LR</u>	<u>O + LR</u>	<u>O + LR</u>	<u>NO</u>	<u>O + LR</u>	<u>O + W</u>
Belgium	<u>N/A</u>	<u>N/A</u>	<u>N/A</u>	<u>O</u>	<u>O</u>	<u>W</u>
Bulgaria	<u>O+W</u>	<u>O +W</u>	<u>O +W</u>	<u>NO</u>	<u>N/A</u>	<u>W</u>
Cyprus	<u>O</u>	<u>O</u>	<u>O</u>	<u>O</u>	<u>O</u>	<u>O</u>
Czech Republic	<u>LR</u>	<u>LR</u>	<u>LR</u>	<u>LR</u>	<u>LR</u>	<u>O + W</u>
Denmark	<u>N/A</u>	<u>O</u>	<u>N/A</u>	<u>N/A</u>	<u>N/A</u>	<u>O</u>
Estonia	<u>N/A</u>	<u>O+W</u>	<u>O +W</u>	<u>N/A</u>	<u>N/A</u>	<u>O</u>
Finland	<u>N/A</u>	<u>N/A</u>	<u>N/A</u>	<u>N/A</u>	<u>N/A</u>	<u>O</u>
France	<u>N/A</u>	<u>NO</u>	<u>N/A</u>	<u>NO</u>	<u>N/A</u>	<u>O</u>
Germany <sup>3</sup>	<u>O</u>	<u>LR</u>	<u>W +LR</u>	<u>N/A</u>	<u>LR</u>	<u>O+LR</u>
Greece	<u>O</u>	<u>O</u>	<u>N/A</u>	<u>O</u>	<u>O</u>	<u>O</u>
Hungary	<u>W</u>	<u>O</u>	<u>O</u>	<u>O +W</u>	<u>O + W</u>	<u>O</u>
Ireland	<u>O</u>	<u>O</u>	<u>O</u>	<u>W</u>	<u>O</u>	<u>W</u>
Italy	<u>LR</u>	<u>O</u>	<u>O</u>	<u>N/A</u>	<u>N/A</u>	<u>O</u>
Latvia	<u>LR</u>	<u>O</u>	<u>NO</u>	<u>NO</u>	<u>O</u>	<u>W</u>
Lithuania	<u>O + W</u>	<u>O + W</u>	<u>O+W</u>	<u>O +W</u>	<u>O +W</u>	<u>O</u>
Luxembourg	<u>N/A</u>	<u>N/A</u>	<u>N/A</u>	<u>N/A</u>	<u>O + W + LR</u>	<u>LR</u>
Malta	<u>N/A</u>	<u>O + W</u>	<u>N/A</u>	<u>NO</u>	<u>N/A</u>	<u>N/A</u>
The Netherlands <sup>4</sup>	<u>N/A</u>	<u>O+LR</u>	<u>W</u>	<u>N/A</u>	<u>N/A</u>	<u>O+LR</u>
Poland	<u>LR</u>	<u>LR</u>	<u>LR</u>	<u>LR</u>	<u>LR</u>	<u>O +W</u>
Portugal	<u>O</u>	<u>O</u>	<u>NO</u>	<u>NO</u>	<u>O</u>	<u>W</u>

Romania	<u>Q</u>	<u>Q+W</u>	<u>Q</u>	<u>Q</u>	<u>Q</u>	<u>Q</u>
<b>Country</b>	<b><u>Right to access evidence</u></b>	<b><u>Right to remain silent</u></b>	<b><u>Right to call expert/witness</u></b>	<b><u>Right to translation</u></b>	<b><u>Right to interpretation</u></b>	<b><u>Right to legal assistance</u></b>
Slovakia	<u>LR</u>	<u>Q</u>	<u>Q</u>	<u>LR</u>	<u>LR</u>	<u>LR</u>
Slovenia	<u>Q</u>	<u>Q</u>	<u>Q</u>	<u>Q</u>	<u>Q</u>	<u>Q</u>
Spain	<u>N/A</u>	<u>Q</u>	<u>Q</u>	<u>Q</u>	<u>LR</u>	<u>LR</u>
Sweden	<u>Q</u>	<u>Q</u>	<u>Q + W</u>	<u>Q</u>	<u>Q + LR</u>	<u>Q</u>
United Kingdom	<u>N/A</u>	<u>Q + LR</u>	<u>Q</u>	<u>N/A</u>	<u>LR</u>	<u>Q+LR</u>

### Number of criminal proceedings in the EU

Figures and graphics available in PDF and WORD PROCESSED

<sup>1</sup> :

There are several options by which information can be provided in writing but not amounting to a Letter of Rights, such as posters in police stations or the simple provision of suspects and accused persons with a copy of the legal provisions governing their right.

<sup>2</sup> :

While there is no official definition of a Letter of Rights, in the study on EU Procedural Rights in Criminal Proceedings (2009) the LR is defined as 'written information of the suspect's procedural rights in a standardised form' (p.34); it is possible to narrow the scope of this definition of LR to (1) easy and accessible document and understandable information on rights, (2) in a standardised form, (3) that is given to the suspect in the initial contacts with investigating authorities. The latter definition was provided directly by Taru Spronken and will be used in 'EU-wide Letter of Rights in criminal proceedings: towards best practice', Maastricht University, 2010

<sup>3</sup> :

Germany introduced a Letter of Rights in January 2010

<sup>4</sup> :

The Netherlands introduced a Letter of Rights in April 2010