



## The right of access to a lawyer

In the European criminal justice area, the procedural rights of suspected or accused persons in criminal proceedings are an essential component of measures harmonising EU law or foreseeing mutual recognition mechanisms. The proposed Directive on the right of access to a lawyer follows a 2009 Council road map on rights of suspects and accused persons.

### Context

According to the European Commission, there are over 8 million criminal proceedings in the European Union each year. The right of defence for anyone suspected of a crime is recognised as a basic element of a fair trial. However the conditions under which suspects can consult a lawyer differ among Member States (MS). In 1999, the Tampere European Council considered that, in criminal matters, common minimum procedural standards could increase confidence in the justice systems of all MS. This would, in turn, lead to more efficient judicial cooperation and the promotion of a fundamental rights culture in the EU. A [similar request](#) was made by the European Parliament after 11 September 2001, in its amendments to the draft EU Framework Decisions on [terrorism](#) and the [European Arrest Warrant](#). However, MS failed to agree on a 2004 [proposal](#) for a framework decision on procedural rights (including a right to legal advice). Under the Lisbon Treaty, unanimity in Council is no longer required, as the ordinary legislative procedure now applies. Moreover, the Charter of Fundamental Rights, now binding, includes access to a lawyer in its Article 47, on the right to a fair trial.

### Roadmap for procedural guarantees

Following its failure to adopt the framework decision, on 30 November 2009, the Council endorsed a [road map on strengthening procedural rights](#) of suspected or accused persons in criminal proceedings. It takes a step-by-step approach, setting out distinct areas for specific EU measures regarding: the right to translation and interpretation (A); the right to receive information on rights and information about

the charges (B); the right to receive legal advice and legal aid (C); the right to communicate with relatives, employers and consular authorities (D); and establishing special safeguards for suspected or accused persons who are vulnerable (E). The first two measures (A and B) have already been adopted, while a final measure (F) was completed with the Commission's 2011 [Green Paper](#) on pre-trial detention.

### The proposal

Parliament is now asked to confirm a [compromise text](#) agreed in trilogue with the Irish Presidency by the Civil Liberties, Justice and Home Affairs Committee (rapporteur Elena Oana Antonescu, EPP, Romania). The new rights would apply to suspects or accused persons from the earliest phases of criminal proceedings until their conclusion. Suspects or accused persons are to have access to a lawyer without undue delay, as well as the right to meet in private and communicate with the lawyer representing them (including prior to questioning by police or other law enforcement or judicial authorities). MS must respect confidentiality of communications between a suspect or accused person and their lawyer (including meetings, correspondence, phone conversations and other communications).

Access to a lawyer should also be granted to a person requested for surrender in accordance with a European Arrest Warrant. Moreover, MS should make general information available to facilitate suspects or accused persons in finding a lawyer. In addition, persons deprived of their liberty should have the right to have at least one person (such as a relative or employer) informed without undue delay. Consular authorities should also be informed when the suspect or accused is a non-national.

The compromise text includes some specific measures for minors as well as for vulnerable suspects and vulnerable accused persons. Limited and temporary derogations in national law remain possible in order to preserve specific national legal traditions.