Fair trials: MEPs strengthen EU-wide standards for legal aid

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People who are suspected or accused of a crime, or are named in a European Arrest Warrant, but cannot afford a lawyer or court proceedings, should have access to EU member state funding and assistance for both "provisional" and "ordinary" legal aid, say Civil Liberties MEPs in amendments, voted on Wednesday, to a proposed EU directive on fair trial rights.

MEPs broadened the draft directive’s scope to include the right to "ordinary legal aid" for suspects or accused persons facing criminal justice. This would entitle those who cannot afford a lawyer to member state “funding and assistance” to meet part or all of the costs of their defence and of court proceedings. Legal aid should be provided "at all stages of the criminal justice process", MEPs say. They also set out strict provisions to clarify when minor offences would be excluded from the directive’s scope.

"For those who lack the necessary financial means, only legal aid can make the right of access to a lawyer effective", said rapporteur Dennis de Jong (GUE/NGL, NL).

The European Commission proposal would only guarantee the right to "provisional" legal aid for suspects or accused persons in criminal proceedings who are "deprived of liberty", i.e. from the moment when they are taken into police custody, and in any event before questioning, until a final decision on their eligibility for legal aid has been taken and comes into effect.

The draft directive would also ensure that legal aid (both provisional and ordinary) is made available for persons named in European Arrest Warrants.

Means and merits tests MEPs added provisions to ensure that a person’s economic situation is properly assessed ("means test"), as well as the situations when legal aid is required in the interests of justice ("merits test"). A merits test should assess, for example, the complexity of the case or the seriousness of the offence. EU countries would be required to make all relevant information on legal aid, "easily accessible and understandable" e.g. by explaining how and where to apply for such aid and providing "transparent criteria on eligibility", to enable suspects to take informed decisions.

Quality of legal aid MEPs also inserted legal aid quality safeguards. These would require member states to put in place or maintain, for instance, an "accreditation" system for legal aid lawyers and continuous professional training to ensure their quality and independence. Suspects or accused persons should "have the right to have the legal aid lawyer assigned to them replaced once", MEPs say.

Recovering costs To reassure those who might be frightened by the prospect of having to reimburse the costs of provisional legal aid later, MEPs inserted an additional condition: these costs may, “exceptionally”, be recovered if suspects are subsequently found not to meet the eligibility criteria for ordinary legal aid under national law and have “intentionally provided the competent authorities with false information on their personal financial situation”.

Next steps The committee vote gives the rapporteur a mandate to start negotiations with the Council of Ministers, with a view to agreeing on the proposed directive (the Council agreed a general approach on it in March). Three-way talks between the Parliament, the Council and the Commission (“trialogues”) should start soon.
**Note to editors** This draft directive is one in a package of proposals to further strengthen procedural rights for citizens in criminal proceedings. They include others on safeguards for children, voted in committee on 5 February (press release), and another on the presumption of innocence, voted on 31 March (press release). The previous Parliament passed three other EU laws that are part of a "roadmap" for strengthening procedural rights: a directive on the right to interpretation and translation, a directive on the right to information and a directive on the right of access to a lawyer. The UK and Ireland decided not to "opt in" to the proposed directive, while Denmark has an “opt out” by default from justice and home affairs legislation. Result of the vote on the mandate to open negotiations with the Council: 51 votes in favour, 3 against and 1 abstention In the chair: Kinga Gál (EPP, HU)

**Facts**

- "Ordinary legal aid" means member state funding and assistance to exercise the right of access to a lawyer. It should cover defence costs such as the cost of the lawyer, and other costs of the proceedings, such as court fees. The assistance is to be provided fully or partially free of charge.
- "Provisional legal aid" means legal aid provided until a final decision on legal aid has been taken and comes into effect.

**Useful information**


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