

Legal aid in criminal proceedings

The EU is close to taking the final step on the long road to improving citizens' legal defence rights. The October plenary is due to vote on the compromise agreement reached by co-legislators on the proposed legal aid directive.

Background

Legal aid, understood as free legal assistance provided to anyone who cannot afford the costs themselves, is a precondition to ensuring the right of access to a lawyer in criminal proceedings is effective, and thus the right to a fair trial. The right to legal aid is enshrined in the [European Convention on Human Rights](#) (Article 6(3)(c)) and the [EU Charter of Fundamental Rights](#) (Article 47(3)). At international level, it is recognised in the [International Covenant on Civil and Political Rights](#) and regulated by the [UN Principles and Guidelines on Access to Legal Aid in Criminal Justice Systems](#) adopted in 2012.

Roadmap for strengthening procedural rights of suspected or accused persons in criminal proceedings

Legal aid was included as an area of action in the [Roadmap on procedural rights](#), adopted by the Council in 2009 with the aim of establishing minimum common standards on rights to a fair trial across the EU, and to help enhance mutual trust between Member States' judicial authorities. Five other measures have been adopted since 2009 following the roadmap: right to interpretation and translation ([Directive 2010/64/EU](#)), right to information ([Directive 2012/13/EU](#)), right of access to a lawyer ([Directive 2013/48/EU](#)), presumption of innocence ([Directive 2016/343/EU](#)), and procedural safeguards for children ([Directive 2016/800/EU](#)).

Commission proposal

The [proposed directive](#) is the last measure included in the roadmap and its main objective is to ensure the effectiveness of the right to access to a lawyer in criminal and in European Arrest Warrant (EAW) proceedings, in line with [Directive 2013/48/EU](#). It was presented by the Commission together with a non-binding [Recommendation](#). The proposal is based on Article 82(2) TFEU allowing for the establishment of minimum rules to facilitate mutual recognition of judicial decisions and police and judicial cooperation. The initial Commission proposal laid down rules for *provisional* legal aid: it would apply from an early stage of the proceedings and ensure that suspects or accused persons benefit from legal aid and access to a lawyer without undue delay and before any questioning. It also included provisions on legal aid to be offered to persons subject to an EAW both in the executing and the issuing Member State (right of dual defence).

The European Parliament

The Committee on Civil Liberties, Justice and Home Affairs (LIBE) adopted its [report](#) in May 2015 (rapporteur: Dennis De Jong, GUE/NGL, the Netherlands). The report introduced substantial changes to the Commission proposal. Most importantly, it broadened the scope to include the right to *ordinary* legal aid (instead of limiting it to *provisional* aid only). It incorporated provisions on eligibility assessments, providing guidance on criteria to apply when legal aid is subject to a 'means test' (factors such as income, family situation, cost of legal aid, etc.) and/or a 'merits test' (assessment of urgency and complexity of the case, severity of penalty, social situation, etc.). It also added provisions on right to information, legal aid quality, professional training, and effective remedy. The European Parliament and the Council [agreed](#) on a compromise text on 30 June 2016. The [compromise](#) was endorsed by the LIBE Committee in July and has now to be confirmed in plenary.

The LIBE Committee requested EPRS to conduct an [Ex-Ante Impact assessment of substantial amendments](#), which concluded that the modifications proposed by the Parliament would have a positive impact on the fundamental rights of suspects or accused persons, even though they would imply certain administrative costs for Member States. EPRS also produced an [Initial Appraisal](#) of the Commission's impact assessment of the proposal.

