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*Committee on Civil Liberties, Justice and Home Affairs*

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**2010/0215(COD)**

20.12.2010

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## **DRAFT REPORT**

on the proposal for a directive of the European Parliament and of the Council  
on the right to information in criminal proceedings  
(COM(2010)0392 – C7-0189/2010 – 2010/0215(COD))

Committee on Civil Liberties, Justice and Home Affairs

Rapporteur: Birgit Sippel

***Symbols for procedures***

- \* Consultation procedure
- \*\*\* Consent procedure
- \*\*\*I Ordinary legislative procedure (first reading)
- \*\*\*II Ordinary legislative procedure (second reading)
- \*\*\*III Ordinary legislative procedure (third reading)

(The type of procedure depends on the legal basis proposed by the draft act.)

***Amendments to a draft act***

In amendments by Parliament, amendments to draft acts are highlighted in ***bold italics***. Highlighting in *normal italics* is an indication for the relevant departments showing parts of the draft act which may require correction when the final text is prepared – for instance, obvious errors or omissions in a language version. Suggested corrections of this kind are subject to the agreement of the departments concerned.

The heading for any amendment to an existing act that the draft act seeks to amend includes a third line identifying the existing act and a fourth line identifying the provision in that act that Parliament wishes to amend. Passages in an existing act that Parliament wishes to amend, but that the draft act has left unchanged, are highlighted in **bold**. Any deletions that Parliament wishes to make in such passages are indicated thus: [...].

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## DRAFT EUROPEAN PARLIAMENT LEGISLATIVE RESOLUTION

**on the proposal for a directive of the European Parliament and of the Council on the right to information in criminal proceedings  
(COM(2010)0392– C7-0189/2010 – 2010/0215(COD))**

**(Ordinary legislative procedure: first reading)**

*The European Parliament,*

- having regard to the Commission proposal to Parliament and the Council (COM(2010)0392),
  - having regard to Article 294(2) and Article 82(2) of the Treaty on the Functioning of the European Union, pursuant to which the Commission submitted the proposal to Parliament (C7-0189/2010),
  - having regard to Article 294(3) of the Treaty on the Functioning of the European Union,
  - having regard to the reasoned opinions sent to its President by national parliaments on the compliance of the draft act with the principle of subsidiarity,
  - having regard to the opinion of the European Economic and Social Committee<sup>1</sup>,
  - having regard to the opinion of the Committee of the Regions<sup>2</sup>,
  - having regard to Rule 55 of its Rules of Procedure,
  - having regard to the report of the Committee on Civil Liberties, Justice and Home Affairs and the opinion of the Committee on Legal Affairs (A7-0000/2010),
1. Adopts its position at first reading hereinafter set out;
  2. Calls on the Commission to refer the matter to Parliament again if it intends to amend its proposal substantially or replace it with another text;
  3. Instructs its President to forward its position to the Council, the Commission and the national parliaments.

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<sup>1</sup>

<sup>2</sup>

## Amendment 1

### Proposal for a directive Recital 15

*Text proposed by the Commission*

*Amendment*

***(15) This Directive does not apply in proceedings conducted by administrative authorities in relation to the breach of competition legislation, whether national or European, unless the case is brought before a court having jurisdiction in criminal matters.***

*deleted*

Or. en

*Justification*

*This Directive should cover all cases of limitation of personal freedom, irrespective of how Member States qualify the proceedings.*

## Amendment 2

### Proposal for a directive Article 1

*Text proposed by the Commission*

*Amendment*

The Directive lays down rules concerning the right of suspected and accused persons to information about their rights and about the ***charge in criminal proceedings*** against them.

The Directive lays down rules concerning the right of suspected and accused persons to information about their rights and about the ***accusation*** against them.

Or. en

*Justification*

*Accusation seems to be a better and more flexible wording in view of the transposition by Member States.*

### Amendment 3

#### Proposal for a directive Article 3 – paragraph 1

*Text proposed by the Commission*

1. Member States shall ensure that any person who is suspected or accused of having committed a criminal offence is provided ***promptly*** with information on his procedural rights ***in simple and accessible language***.

*Amendment*

1. Member States shall ensure that any person who is suspected or accused of having committed a criminal offence is ***immediately*** provided with ***written*** information on his procedural rights.

Or. en

*Justification*

*The suspect/accused should be granted the right to be informed about his/her rights as soon as possible.*

### Amendment 4

#### Proposal for a directive Article 3 – paragraph 2

*Text proposed by the Commission*

2. The information referred to in paragraph 1 shall include as a minimum:

– the right of access to a lawyer, ***where necessary free of charge***,

– the right to be informed of the ***charge and, where appropriate, to be given access to the case-file***,

– ***the right to interpretation and***

*Amendment*

2. The information referred to in paragraph 1 shall include as a minimum:

– ***the right to interpretation and translation***,

– the right of access to a lawyer,

– ***the conditions to obtain access to a lawyer free of charge***,

– the right to be informed of the ***accusation***,

– ***the right to access to the evidentiary material related to the case***,

– ***the right to remain silent***.

*translation,*

*– the right to be brought promptly before a court if the suspected or accused person is arrested.*

Or. en

*Justification*

*The proposed structure seems more logical. The right to interpretation and translation should be mentioned first, as it is already harmonised at EU level.*

*The proposed structure seems more logical.*

**Amendment 5**

**Proposal for a directive  
Article 3 a (new)**

*Text proposed by the Commission*

*Amendment*

*Article 3a*

*The Letter of Rights*

*1. The information referred to in Article 3 shall be given in writing and take the form of a Letter of Rights.*

*2. The Letter of Rights shall be drafted in simple language and shall contain at least the elements set out in Annex I to this Directive.*

*3. The information to be provided under this Directive shall be delivered in a language that the suspected or accused person understands. In the case of a child or a person with a mental disability, information about the accusation shall be provided in a manner appropriate to his age, level of maturity and intellectual and emotional capabilities.*

*4. Member States shall ensure that, where the suspected or accused person does not speak or understand the language of the*

*proceedings, he/she receives the Letter of Rights in a language which he /she understands. Member States shall ensure that a mechanism is in place to convey the information to a suspected or accused person who is partially sighted or blind or cannot read.*

*5. In exceptional cases, where a Letter of Rights is not available in the appropriate language, the suspected or accused person shall be informed of his rights orally in a language which he/she understands. A Letter of Rights in a language which he/she understands shall then be given to him/her without undue delay.*

Or. en

#### *Justification*

*The proposed structure seems more logical. In order to cover also this kind of case, a reference to health or mental disability was inserted. The Annex should be binding as to its content and should reflect the scope of this Directive.*

#### **Amendment 6**

##### **Proposal for a directive Article 3 b (new)**

*Text proposed by the Commission*

*Amendment*

#### *Article 3b*

##### *The right to information about the accusations*

*1. Member States shall ensure that a suspected or accused person is provided with sufficient information about the accusation to safeguard the fairness of the criminal proceedings and effectively exercise his defence rights.*

*2. Member States shall ensure that a person who has been charged with a criminal offence is provided with sufficient information on the nature and*

*cause of the accusation as soon as according to national law he/she is entitled to take the first steps in his defence.*

*3. Member States shall ensure that as soon as a person is deprived of his/her liberty, he/she is provided with information about the reasons for his detention, including information about the offence which he/she is suspected of having committed, in accordance with Article 4 of this Directive.*

*4. The information to be given shall include at least:*

*(a) a description of the circumstances in which the offence is alleged to have been committed, including the time, place and nature of the participation in the offence by the suspected or accused person and*

*(b) the nature and legal classification of the offence.*

Or. en

#### *Justification*

*The proposed structure seems more logical. Accusation seems to be a better and more flexible wording than "charge" in view of the transposition by Member States. The moment in which the right to have the information on the accusation becomes effective should be the moment in which according to national law the suspected/accused person is entitled to undertake any defensive action or is deprived of liberty.*

#### **Amendment 7**

##### **Proposal for a directive Article 4 – title**

*Text proposed by the Commission*

The right to written information about rights *on arrest*

*Amendment*

The right to written information about rights *in the event of deprivation of liberty*

Or. en

*Justification*

*The proposed wording is wider.*

**Amendment 8**

**Proposal for a directive  
Article 4 – paragraph 1**

*Text proposed by the Commission*

1. Where a person is **arrested** by the competent authorities of a Member State in the course of criminal proceedings, he shall be **promptly** provided with information about his procedural rights in writing (Letter of Rights). He shall be given an opportunity to read the Letter of Rights and be allowed to keep it in his possession throughout the time he is deprived of his liberty.

*Amendment*

1. Where a person is **deprived of liberty** by the authorities of a Member State in the course of criminal proceedings, he/**she** shall **immediately** be provided with information about his procedural rights in writing (Letter of Rights). He/**she** shall be given an opportunity to read the Letter of Rights and be allowed to keep it in his/**her** possession throughout the time *during which* he/**she** is deprived of his/**her** liberty. ***This provision shall apply to all cases where persons are deprived of liberty by public authorities.***

Or. en

*Justification*

*This Directive should be applied in any case of deprivation of liberty, irrespective of how according to national law, the proceeding is qualified.*

**Amendment 9**

**Proposal for a directive  
Article 4 – paragraph 2**

*Text proposed by the Commission*

2. The Letter of Rights shall **be drafted in simple language and shall include** at least **that information referred to in Article 3(2)**. Annex I to this Directive **contains an indicative model of such a Letter**.

*Amendment*

2. **Where a person has been deprived of liberty**, the Letter of Rights shall **contain** at least **the elements set out in** Annex I to this Directive **with the addition of the information required under paragraph 2a**.

Or. en

*Justification*

*The Annex should be binding. The other provisions have been moved to a horizontal provision.*

**Amendment 10**

**Proposal for a directive**  
**Article 4 – paragraph 2 a (new)**

*Text proposed by the Commission*

*Amendment*

***2a. In addition of to the information to be given under Article 3, the person deprived of liberty shall be informed about the following:***

- (a) for how many hours/days he/she may be deprived of liberty before being brought before a judicial authority;***
- (b) how to challenge the arrest and how to obtain a review of his/her detention;***
- (c) the maximum period of pre-trial detention applicable to his/her case.***

Or. en

*Justification*

*The proposed structure seems more logical.*

**Amendment 11**

**Proposal for a directive**  
**Article 4 – paragraph 2 b (new)**

*Text proposed by the Commission*

*Amendment*

***2b. The person deprived of liberty shall be given the opportunity to read the Letter of Rights and be allowed to keep it in his possession throughout the period during which he is deprived of his liberty.***

Or. en

*Justification*

*The suspect/accused person should have the right to keep a copy of the letter of right in order to be able to take his/her time to think about his/her rights and plan a defensive strategy keeping in mind the possibilities given by law.*

**Amendment 12**

**Proposal for a directive  
Article 4 – paragraph 3**

*Text proposed by the Commission*

*Amendment*

**3. Member States shall ensure that, where the suspected or accused person does not speak or understand the language of the proceedings, he receives the Letter of Rights in a language he understands. Member States shall ensure that a mechanism is in place to convey the information to a suspected or accused person who is partially sighted or cannot read. Where the suspected or accused person is a child, the information contained in the Letter of Rights shall also be provided orally in a manner adapted to the child's age, level of maturity and intellectual and emotional capacities.** *deleted*

Or. en

*Justification*

*The proposed structure seems more logical. These provisions have been moved to a horizontal provision.*

**Amendment 13**

**Proposal for a directive  
Article 4 – paragraph 4**

*Text proposed by the Commission*

*Amendment*

**4. Where a Letter of Rights is not available in the appropriate language, the** *deleted*

*suspected or accused person shall be informed of his rights orally in a language he understands. A Letter of Rights in a language he understands shall then be given to him without undue delay.*

Or. en

*Justification*

*The proposed structure seems more logical. These provisions have been moved to a horizontal provision.*

**Amendment 14**

**Proposal for a directive  
Article 5**

*Text proposed by the Commission*

Member States shall ensure that any person subject to proceedings for the execution of a European Arrest Warrant receives an appropriate Letter of Rights setting out the rights of that person as laid down in the Framework Decision 2002/584/JHA. Annex II to this Directive *contains an indicative model of such Letter.*

*Amendment*

Member States shall ensure that any person subject to proceedings for the execution of a European Arrest Warrant receives an appropriate Letter of Rights setting out the rights of that person as laid down in the Framework Decision 2002/584/JHA. ***The Letter of Rights shall be drafted in simple language and shall contain at least the elements set out in Annex II to this Directive.***

Or. en

*Justification*

*The Annex should be binding as to its content and should reflect the scope of this Directive.*

## Amendment 15

### Proposal for a directive Article 7 – title

*Text proposed by the Commission*

*Amendment*

The right to access to the *case-file*

The right to access to the *evidentiary material related to the case*

Or. en

*Justification*

*The reference to "evidentiary material" seems to be clearer than "case-file".*

## Amendment 16

### Proposal for a directive Article 7 – paragraph 1

*Text proposed by the Commission*

*Amendment*

1. Where a suspected or accused person is arrested at any stage of the criminal proceedings, Member States shall ensure that *he or his lawyer is granted access to those documents contained in the case-file* which *are* relevant for the determination of the lawfulness of the arrest or detention.

1. Where a suspected or accused person is arrested at any stage of the criminal proceedings, Member States shall ensure that *evidentiary material related to the case in the possession of the competent authorities*, which *is* relevant for the determination of the lawfulness of the arrest or detention, *is made available to the arrested person or his lawyer.*

Or. en

*Justification*

*The reference to "evidentiary material" seems to be clearer than "case-file". All evidentiary material related to the case should be made available to the defendant.*

## Amendment 17

### Proposal for a directive Article 7 – paragraph 2

*Text proposed by the Commission*

2. Member States shall ensure that **an** accused person or his lawyer is granted access to the **case-file once** the investigation of the criminal offence is concluded. **Access to certain documents contained in the case-file may be refused by a competent judicial authority where access to these documents may lead to serious risk to the life of another person or may seriously harm the internal security of the Member State in which the proceedings take place. Where it is in the interests of justice,** the accused person or his lawyer may request **an index** of the **documents contained in the case-file.**

*Amendment*

2. Member States shall ensure that a **suspected or** accused person or his lawyer is granted **full** access to the **evidentiary material related to the case in the possession of the competent authorities, at the latest when** the investigation of the criminal offence is concluded. The **suspected or** accused person or his lawyer may request a **schedule** of the **evidentiary material in the possession of the competent authorities.**

Or. en

*Justification*

*The reference to "evidentiary material" seems to be clearer than "case-file". All evidentiary material related to the case, with no exception, should be made available to the defendant.*

## Amendment 18

### Proposal for a directive Article 7 – paragraph 3

*Text proposed by the Commission*

3. Access to the **case-file** shall be provided in good time to allow the suspected or accused person to prepare his defence or challenge pre-trial decisions. It shall be provided free of charge.

*Amendment*

3. Access to the **evidentiary material related to the case in the possession of the competent authorities** shall be provided in good time to allow the suspected or accused person to prepare his defence or challenge pre-trial decisions. It shall be provided free of charge.

Or. en

*Justification*

*The same as for the previous amendments.*

**Amendment 19**

**Proposal for a directive  
Article 8 – paragraph -1 (new)**

*Text proposed by the Commission*

*Amendment*

***-1. Member States shall ensure that when information is provided to the suspected or accused person in accordance with this Directive, that fact will be noted, using the recording procedure in accordance with the law of the Member State concerned.***

Or. en

*Justification*

*The fact that the suspected/accused person has been informed about his/her rights should be recorded.*

**Amendment 20**

**Proposal for a directive  
Article 8 – paragraph 1**

*Text proposed by the Commission*

*Amendment*

1. Member States shall ensure that a procedure is in place to ascertain whether a suspected or accused person has received all information relevant to him in accordance with **Articles 3 to 7**.

1. Member States shall ensure that a procedure is in place to ascertain whether a suspected or accused person has received all information relevant to him/**her** in accordance with **this Directive**.

Or. en

*Justification*

*This provision should cover the whole Directive.*

## **Amendment 21**

### **Proposal for a directive**

#### **Article 8 – paragraph 1 a (new)**

*Text proposed by the Commission*

*Amendment*

***1a. Member States shall ensure that a suspected or accused person has the right to challenge, in accordance with procedures in national law, the possible failure or refusal of the competent authorities to provide the information required to be provided under this Directive.***

Or. en

*Justification*

*This provision seems clearer than Article 8 Paragraph 2 of the Commission proposal.*

## **Amendment 22**

### **Proposal for a directive**

#### **Article 8 – paragraph 2**

*Text proposed by the Commission*

*Amendment*

***2. Member States shall ensure that a suspected or accused person has an effective remedy in instances where he does not receive this information.***

***deleted***

Or. en

*Justification*

*The same as in the previous amendment.*

## Amendment 23

### Proposal for a directive

#### Article 8 – paragraph 3 a (new)

*Text proposed by the Commission*

*Amendment*

***3a. Evidence gathered in breach of the rights conferred by this Directive shall not be admissible in court proceedings.***

Or. en

#### *Justification*

*When the rights of the suspected/accused person are infringed, any evidence collected should be considered as non admissible.*

## Amendment 24

### Proposal for a directive

#### Annex I

*Text proposed by the Commission*

***Indicative<sup>1</sup> model Letter of Rights for suspected and accused persons on arrest:***

***If you are arrested by the police you have the following rights:***

***A. to be informed of what offence you are suspected***

***B. to the assistance of a lawyer***

***C. to an interpreter and translation of documents, if you do not understand the language***

***D. to know for how long you can be detained***

***You are entitled to keep this Letter of Rights with you during your detention.***

***A. Information on the suspicion***

***- You have the right to know why you are suspected of having committed a criminal offence immediately after deprivation of liberty, even if the police do not question you.***

***- You or your lawyer can ask to see the parts of the case-file relating to your arrest and detention or be informed about their content in detail.***

***B. Help of a lawyer***

***- You have the right to speak to a lawyer before the police start questioning you.***

***- If you ask to speak to a lawyer, it does not make you look like you have done anything wrong.***

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<sup>1</sup> To be complemented with other relevant procedural rights applicable in Member States.

*- The police must help you to get in touch with a lawyer.*

*- The lawyer is independent from the police and will not reveal any information you give him without your consent.*

*- You have the right to speak with a lawyer in private, both at the police station and/or on the telephone.*

*- If you are not able to pay for a lawyer, the police have to provide you with information about free or partially free legal assistance.*

**C. Help of an interpreter**

*- If you do not speak or understand the language, an interpreter will be called for you. The interpreter is independent from the police and will not reveal any information you give him without your consent.*

*- You can also ask for an interpreter to help you to talk to your lawyer.*

*-The help of an interpreter is free of charge.*

*-You have the right to receive a translation of any order by a judge allowing your arrest or keeping you in custody. You may also ask to have other essential documents in the investigation translated.*

**D. How long can you be deprived of your liberty?**

*- If you are not released, you must be brought before a judge within \*1 hours after you have been deprived of your liberty.*

*- The judge must then hear you and can decide whether you are to be kept in custody or released. You have the right to receive a translation of the judge's decision if he decides that you will remain in custody.*

*- You have the right to ask for your release at any time. Your lawyer can advise you on how to proceed.*

*Amendment*

**Model of Letter of Rights for suspected and accused persons:**

*If you are suspected or arrested you have the following rights:*

*A. the right to an interpreter and to a translation of the documents, if you do not understand the language*

*B. the right of access to a lawyer*

*C. the right to be informed of the conditions to obtain access to a lawyer free of charge*

*D. the right to be informed of the accusation*

*E. the right to access to the evidentiary material related to the case*

*E. the right to remain silent.*

*In event of deprivation of liberty, the following rights apply to the arrested person in addition:*

*A. the right to be informed on how many hours/days you may be deprived of your liberty before being brought before a judicial authority*

*B. the right to be informed on how you can challenge the arrest and how to obtain a review*

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<sup>1</sup> (...)

*of your detention*

*C. the right to be informed on the maximum period of pre-trial detention applicable to your case*

*You are entitled to keep this Letter of Rights with you throughout the time during which you are deprived of your liberty.*

Or. en

Amendment 25

**Proposal for a directive  
Annex II**

*Text proposed by the Commission*

*Indicative<sup>1</sup> model Letter of Rights for persons arrested on the basis of a European Arrest Warrant:*

*If you are arrested by the police on the basis of a European Arrest Warrant you have the following rights:*

*A. to know why you have been arrested*

*B. to the assistance of a lawyer*

*C. to an interpreter and translation of documents, if you do not understand the language*

*D. to be informed of your right to agree to surrender*

*E. to a hearing if you do not agree to surrender*

*F. to be released once the relevant deadline has passed*

*You are entitled to keep this Letter of Rights with you during your detention.*

*A. Right to know what you are arrested for*

*- You have a right to know why you are sought by another country.*

*B. Help of a lawyer*

*- You have the right to see a lawyer. The police must help you to get in touch with a lawyer.*

*- The lawyer is independent from the police and will not reveal any information you give him without your consent.*

*- You have the right to speak with a lawyer in private, both at the police station and/or on the telephone.*

*- If you are not able to pay for a lawyer the police have to provide you with information about free legal assistance.*

*C. Help of an interpreter*

*-If you do not speak or understand the language, an interpreter will be called for you. The interpreter is independent from the police and will not reveal any information you give him without your consent.*

*-You can also ask for an interpreter to help you to talk to your lawyer.*

*-The help of an interpreter is free of charge.*

*-You have the right to receive a translation of any order by a judge allowing your arrest or keeping you in custody. You may also ask to have other essential documents in the investigation translated.*

***D. Your right to agree to surrender***

***- You have the right to agree to being surrendered under a European Arrest Warrant. This should speed the procedure up.***

***- If you agree to be surrendered, it may be difficult to change this decision at a later stage. You should speak to a lawyer before deciding whether or not to agree to surrender.***

***E. Your right to a hearing***

***- If you do not consent to be sent to the Member State seeking you, you are entitled to go before a judge and to explain why you don't consent.***

***F. Right to be released once the relevant deadline has passed***

***- As a general rule you have to be surrendered within 10 days of a court giving a final decision that you should be surrendered. If you have not been surrendered after 10 days, the authorities normally have to release you. However, there are some exceptions to this rule, so you should speak to a lawyer about this.***

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<sup>1</sup> ***To be complemented with other relevant procedural rights applicable in Member States.***

*Amendment*

***Model of Letter of Rights for persons arrested on the basis of a European Arrest Warrant:***

***If you are arrested by the police you have the following rights:***

***A. the right to an interpreter and to a translation of the documents, if you do not understand the language***

***B. the right of access to a lawyer***

***C. the right to be informed of the conditions to obtain access to a lawyer free of charge***

***D. the right to be informed of the accusation***

***E. the right to access to the evidentiary material related to the case***

***F. the right to remain silent***

***G. the right to be informed on how many hours/days you may be deprived of your liberty before being brought before a court***

***H. the right to be informed on how you can challenge the European Arrest Warrant***

***I. the right to be informed on the maximum period of detention in view of the surrender***

***You are entitled to keep this Letter of Rights with you throughout the period during which you are deprived of your liberty.***

Or. en

## EXPLANATORY STATEMENT

Ensuring that common minimum standards in criminal proceedings are in place would both better grant EU citizens' fundamental rights and help overcoming the difficulties encountered in the implementation of the principle of mutual recognition in criminal matters because of a lack of trust between judicial authorities.

Following to the failure of the adoption of a horizontal legal instrument on procedural rights in criminal proceedings (2004 Commission Proposal for a Framework Decision), the Council opted for a step by step approach and on 30 November 2009 adopted a Roadmap on procedural Rights inviting the Commission to table a series of legislative proposals corresponding to the measures listed in the Roadmap. The proposal for a Directive on the right to information in criminal matters presented by the European Commission in July 2010 is the second step of the list of measures contained in the Roadmap on Procedural Rights. It aims at setting common minimum standards as regards the right to **information in criminal proceedings** throughout the European Union. The first step, on the right to interpretation and translation, is a Directive adopted on 8 October 2010.

In the light of the proposal, the Directive should apply from the time that a person is made aware by the competent authorities of a Member State, by official notification or otherwise, that he/she is suspected or accused of having committed a criminal offence until the conclusion of the proceedings (including any appeal). Proceedings applying the European Arrest Warrant should also be within the scope whilst according to Recital 15 of the proposal, the Directive should not apply in proceedings conducted by administrative authorities in relation to the breach of competition legislation, whether national or European, unless the case is brought before a court having jurisdiction in criminal matters.

The main purpose of the proposal is affirming that suspect and accused persons have the right to be informed about their rights. Such information should be given in simple and accessible language, orally or in writing, in a language that the suspected or accused person understands. Specific provisions concern children and persons who are partially sighted or blind or who cannot read. The information should be contained in the so called "Letter of Rights".

According to the proposal, specific information should be given in case where a person is deprived of liberty by Member States' competent authorities in the course of the criminal proceedings on suspicion of having committed a criminal offence (e.g. through arrest by the police and being placed in pre-trial detention on the order of a judge). Only in this case Member States would be required to give information on procedural rights in writing.

Together with a general right to be informed about procedural rights, the proposal aims to further define two specific rights: the right to information about the charge and the right to access to the case file. This last right is however limited as the proposal says that access to certain documents in the case-file may be excluded where this may lead to serious risk to the life of another person or may seriously harm the internal security of the Member State in which the proceedings are taking place.

In order to ensure that the right to information is effectively granted, the proposal provides that a procedure is in place to assess whether the suspected or accused person has received the

information and that an effective remedy is in place in case he/she has not.

Further provisions concern training and the non-regression clause.

Two Annexes are enclosed to the proposal: Annex I contains an *indicative* model of the Letter of Rights to be provided to a suspected or accused person on arrest whilst Annex II contains an *indicative* model of the Letter of Rights to be provided to a person arrested on the basis of a European Arrest Warrant.

Being "indicative" models, Member States would be free not to use them. It must be noted that the two annexes contains specifications that go much further then what granted by the proposal.

## POSITION OF THE RAPPORTEUR

EU citizens are entitled to travel, study and work within the territory of the European Union. However, these freedoms are constrained by 27 different legal systems in the Member States. The EU is therefore aiming to establish a single area of justice, with common rules and intensive cooperation. While the existing legislative framework in the area of justice focuses primarily on enhanced cooperation between the judicial authorities of the Member States, this Directive concentrates on EU citizens and the rights they enjoy in case they are involved in criminal proceedings. If this happens, in somebody's home country or in another EU Member State, a fair trial in line with the ECHR case law must be granted. This implies respect of basic procedural rights such as consulting a lawyer or having interpretation and translation if needed.

Being aware of your rights is the first step to have them respected. Failure by public authorities to respect those rights will jeopardise the fairness of criminal proceedings and may lead to miscarriages of justice. Your Rapporteur therefore welcomes the aim of the Commission proposal which is to set common minimum standards as regards the right to information in criminal proceedings throughout the European Union. If adopted and correctly implemented it will improve the rights of suspects and accused persons by ensuring that they receive information about their rights.

This report amends the Commission proposal in order to ensure that the Directive covers all cases of limitation of personal freedom, irrespective of how Member States qualify the proceedings according to which the suspect has been deprived of his /her liberty. Nobody knows in advance how long a suspect will be kept in police custody or for how long the person will be deprived of his/her liberty. While the various rights mentioned in the Letter of rights might not always apply, the suspected or accused person is nonetheless entitled to be provided immediately with information in written on his/her procedural rights.

Article 3 of the Directive, laying down the procedural rights that all suspected and accused persons in criminal proceedings should be informed about at least, should be extended to the following rights:

- the right to interpretation and translation
- the right to access to a lawyer
- the conditions to obtain access to a lawyer free of charge
- the right to be informed of the accusation
- the right to access to the evidentiary materials related to the case
- the right to remain silent

The Letter of Rights should in addition contain the following information for arrested persons mentioned of this Directive:

a) how many hours/days the person may be deprived of his/her liberty before being brought before a judicial authority;

- b) how the person can challenge the arrest and how to obtain a review of his/her detention;
  - c) the maximum deadline for pre-trial detention applicable to his/her case
- The person should always be given the opportunity to read the Letter of Rights and be allowed to keep it in his/her possession throughout the time he/she is deprived of liberty.

It is important for Member States to ensure that a suspected or accused person is provided with sufficient information about the accusation to safeguard the fairness of the criminal proceedings and effectively exercise his/her right of defence. Taking into account the variety of procedural rules and the different meaning of the term "charge" across the Member States, the term "accusation" appears to be more appropriate. Member States should also ensure that a person who is subject to a criminal charge is provided with sufficient information on the nature and cause of the accusation as soon as according to national law he/she is entitled to undertake any defensive action. An arrested person should also, as soon as he/she is deprived of liberty, be provided with information about the reasons for his arrest, including information about the offence he/she is suspected of having committed, according to Article 4 of this Directive.

In addition, the concept of the case-file under Article 7 of the Commission proposal, which is not recognised by all Member States, could be better expressed using the term "the evidentiary materials related to the case", which widens the scope of the term. Member States should always ensure that a suspected or accused person or his lawyer is granted full access to the evidentiary materials related to the case in the possession of the competent authorities, at the latest when the investigation of the criminal offence is concluded. The suspected or accused person or his lawyer may request a list of the materials in the possession of the competent authorities.

As it would be confusing to have different Letters of rights, applying to different situations, they should be covered in one model of a letter of rights. This model contained in the Annex 1 to this Directive should be compulsory for Member States and as a minimum include the rights laid down in this Directive. The Directive contains a second Annex with a separate Letter of Rights on the European Arrest Warrant, as its execution is not considered to be a criminal proceeding in every Member State. This distinction has also been taken under measure A and therefore is consistent with the Road Map.

This Directive is only the second step in a series of measures in the Procedural Rights Roadmap and considered as part of a comprehensive package of legislation to be presented by the Commission over the next few years which will provide a minimum set of procedural rights in criminal proceedings in the European Union. Therefore, it would be highly welcome, if the Commission could provide a model of the Letter of rights at the end of the Road Map in accordance with the procedural rights still to be adopted in the coming years.