

# Legal Aid in the EU: main features of Directive 2016/1919/EU

*Steven Cras*  
*Administrator, Council General Secretariat*

*Cracow, 3 March 2017*



# Legal Aid – Directive 2016/1919/EU

## Overview

- Generalities
- Legal aid in criminal proceedings
- Legal aid in EAW proceedings
- Competence to take decisions
- Quality of legal aid services and training
- Remedies
- Summary

## Generalities : ECHR – Roadmap

- ECHR - Art. 6(3)(c): Everyone charged with a criminal offence has the right to defend himself in person or through legal assistance of his own choosing or, if he has not sufficient means to pay for legal assistance, to be given it free when the interests of justice so require.
- Roadmap – Link between right of access to a lawyer and right to legal aid (measure C)
- Commission decided to split the two rights

# Generalities : Negotiations – Adoption

- Negotiations (in Council and with the European Parliament) under IT, LV, LU and NL Presidencies.
- Agreement on 30 June 2016 (after 9 trilogues).
- Adoption on 26 October 2016 as Directive (EU) 2016/1919 (OJ L 297, 4.11.2016, p.1).
- Deadline for implementation: 25 May 2019.

# Legal aid in criminal proceedings (Art. 2+4) (I)

- Scope (Art. 2): Directive applies if a suspect or accused person has the right of access to a lawyer under Directive 2013/48, and
  - 1) is deprived of liberty; or
  - 2) is required by law to be assisted by a lawyer; or
  - 3) is required or permitted to attend an investigative or evidence-gathering, as a minimum the following:
    - i) identity parades;
    - ii) confrontations;
    - iii) experimental reconstructions of the scene of crime.
- Exclusion for minor offences, but Directive applies in any case when a decision on detention is taken, and during detention.

## Legal aid in criminal proceedings (Art. 2+4) (II)

- Right to legal aid (Art. 4):
- Suspects or accused persons who lack sufficient resources (A) to pay a lawyer have a right to legal aid when the interests of justice so require (B) (cf Art. 6 ECHR)
- Member States may apply means test (to determine A) and/or a merits test (to determine B)

## Legal aid in criminal proceedings (Art. 2+4) (III)

- Means test: take into account all relevant and objective factors, such as the income, capital and family situation of the person concerned, as well as the costs of the assistance of a lawyer and the standard of living in that Member State.
- Merits test: take into account the seriousness of the criminal offence, the complexity of the case and the severity of the sanction at stake.
- Safety net: merits test is deemed to be fulfilled when a court or judge takes a decision on (pre-trial) detention, and during (pre-trial) detention.
- Legal aid should be granted without undue delay, and at the latest before questioning by police/other authority, or before carrying out an investigative or evidence gathering act (if not possible, at least provisional legal aid, rec. 19)

## Legal aid in EAW proceedings (Art. 2+5)

- Scope (art. 2): requested persons that have the right of access to a lawyer under Directive 2013/48.
- Right to legal aid (art. 5):
- In executing state from arrest until surrender (or when the decision on non-surrender becomes final).
- In issuing State:
  - if persons exercise their right to appoint a lawyer in the issuing State; and
  - EAW is for the purpose of conducting a criminal prosecution (not: for execution of a sentence); and
  - legal aid is necessary to ensure effective access to justice.
- Means test may apply (not merits test, deemed to be fulfilled for EAW cases).

## Competence to take decisions (Art. 6)

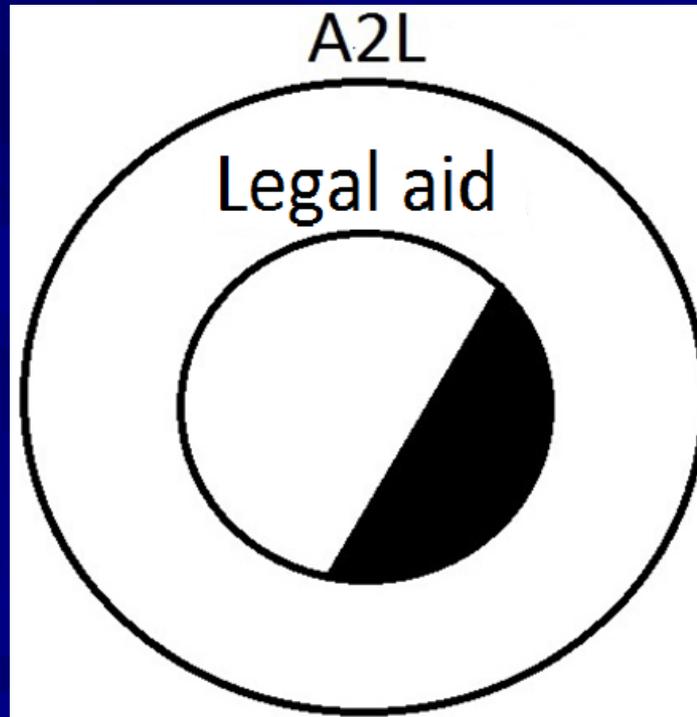
- Decisions on legal aid should be taken by a competent authority.
- This can be independent authority (e.g. legal aid board) or court/judge; in urgent cases also police/prosecution (rec. 24)

# Quality of legal aid services and training (Art. 7)

- Member States should take necessary measures – including with regard to funding – to ensure that:
  - 1) there is an effective legal aid system of adequate quality;
  - 2) legal aid services are of a quality adequate to safeguard the fairness of the proceedings.
- Training:
  - 1) ensure adequate training for staff involved in legal aid decisions;
  - 2) take appropriate measures to promote provision of adequate training for lawyers providing legal aid services.
- Suspects, accused persons and requested persons have the right to have the lawyer providing legal aid services replaced, where the specific circumstances so require.

## Remedies (Art. 8) and summary

- Should be effective remedy in case of a breach.
- Summary:





*Steven Cras*  
*Administrator, General Secretariat*  
*DG H – Judicial Cooperation in Criminal Matters*  
*Council of the European Union*

*March 2017*  
*[steven.cras@consilium.europa.eu](mailto:steven.cras@consilium.europa.eu)*