



Legal aid in the EU Transposition of Directive (EU) 2016/1919

Defence in Future EPPO Proceedings
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Justice



Procedural safeguards for suspects and accused persons

Directive 2010/64/EU

Interpretation and translation (27/10/2013)

Directive 2012/13/EU

Information (02/06/2014)

Directive 2013/48/EU

Access to lawyer; information of and communication with third persons and consular authorities (27/11/2016)

Directive (EU) 2016/343

Presumption of innocence (01/04/2018)

Directive (EU) 2016/800

Children (11/06/2019)

Directive (EU) 2016/1919

Legal aid (5/05/2019)

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Justice

2009 Roadmap

Measure C: Legal Advice and Legal Aid

'The right to legal advice (through a legal counsel) for the suspected or accused person in criminal proceedings at the earliest appropriate stage of such proceedings is fundamental in order to safeguard the fairness of the proceedings; the right to legal aid should ensure effective access to the aforementioned right to legal advice.'

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Case of Salduz v. Turkey

Pt.55: (...) the Court finds that in order for the right to a fair trial to remain sufficiently "practical and effective" (...), Article 6 § 1 requires that, as a rule, access to a lawyer should be provided as from the first interrogation of a suspect by the police, unless it is demonstrated in the light of the particular circumstances of each case that there are compelling reasons to restrict this right. Even where compelling reasons may exceptionally justify denial of access to a lawyer, such restriction – whatever its justification – must not unduly prejudice the rights of the accused under Article 6 (...). The rights of the defence will in principle be irretrievably prejudiced when incriminating statements made during police interrogation without access to a lawyer are used for a conviction.

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The right of access to a lawyer and legal aid

- Directive (EU) 2016/1919 (legal aid) builds upon Directive 2013/48/EU (access to lawyer);
- Article 1(2) and 2(1) and (2) of Directive (EU) 2016/1919;
- Conclusion: both Directives need to be correctly transposed to ensure effective legal assistance;
- Report on the implementation of the access to lawyer Directive: COM(2019) 560 final.

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Scope of application of the access to a lawyer Directive – Article 2

- All suspects or accused persons irrespective of whether they are deprived of liberty, Art. 2(1);
- From the time when they are made aware by the competent authorities of a Member State, by official notification or otherwise, that they are suspected or accused of having committed a criminal offence, Art. 2(1);
- Witnesses becoming suspects, Art. 2(3)
- EAW proceedings: application from the time of their arrest in the executing Member State, Art. 2(2).

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Right of access to a lawyer

- When does the right of access to a lawyer kick in? Article 3(2)
- Content of the right:
questioning + certain investigative or evidence gathering acts; Article 3(3)
- What need Member States do – level of obligation Article 3(4)
- Derogations – Article 3(5)+(6)
- Confidentiality – Article 4
- Waiver – Article 9

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Directive on legal aid - overview

- Scope, Article 2
- Legal aid in criminal proceedings, Article 4
- Legal aid in European arrest warrant proceedings, Article 5
- Decisions regarding the granting of legal aid, competent authority, Article 6
- Quality and training, Article 7

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Legal aid in criminal proceedings

- Means or merits test or combination of both, Article 4(2)+(2)
- Means test, criteria of ECHR case law Article 4(3)
- Merits test, Articles 4(4) and 9:
 - Proportionality test – criteria of ECHR case law;
 - In any event, when
 - ✓ being brought before a competent court or judge in order to decide on detention
 - ✓ during detention
- Legal aid to be granted without undue delay, Article 4(5) (Recital 19)

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Legal aid in EAW proceedings

- Legal aid upon arrest in the executing Member State, Article 5(1)
- Legal aid the issuing Member State (EAW for purpose of conducting criminal prosecution), Article 5(2)
- Means testing (only), Article 5(3)

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Added value of the legal aid Directive?

- Refers to criteria used by ECtHR, but the text will be interpreted by ECJ EU (preliminary rulings and infringement proceedings)
- Legal aid to be granted without undue delay
- Legal aid in the executing Member State and in the issuing Member State (EAW for purpose of conducting criminal prosecution) – means test only

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Directive on legal aid – state of play concerning transposition

- Notifications to the Commission (Article 12 of the Directive):
 - Complete transposition: 17 Member States
 - Partial transposition: 5 Member States
 - No notification: 3 Member States
- Infringement proceedings for non-communication (4 Member States)
- Completeness and conformity check

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Legal aid in EPPO proceedings

- Article 41(2) EPPO Regulation: rights provided for in Directive (EU) 2016/1919 (legal aid) and Directive 2013/48/EU (access to lawyer) as implemented in national law
- Relevant investigation measures: questioning + investigative or evidence gathering acts in the sense of Article 3(3)(c) Dir 2013/48/EU; Article 30(4) EPPO Regulation
- Article 41(1) EPPO Regulation: Charter of Fundamental Rights of the European Union
- Article 41(3) EPPO Regulation: *sui generis* right of defence



Thank you!

European Commission
DG Justice, Criminal Justice and Consumers

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