



CCBE COMMENTS ON THE PROPOSAL FOR A DIRECTIVE OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL ON THE RIGHT TO INFORMATION IN CRIMINAL PROCEEDINGS

CCBE Comments on the proposal for a Directive of the European Parliament and of the Council on the right to information in criminal proceedings

On 20 July 2010, the Commission presented to the European Parliament and to the Council a proposal for a Directive on the right to information in criminal proceedings. This proposal refers to "measure B" of the Roadmap for strengthening procedural rights of suspected and accused persons in criminal proceedings (the Roadmap contains 5 measures of which "measure A" on the Right to Interpretation and Translation was approved in July 2010).

The proposal contains an indicative model Letter of Rights for suspected and accused persons on arrest, and an indicative model Letter of Rights for suspected and accused persons arrested under a European Arrest Warrant. The proposal aims to set common minimum standards as regards the right to information in criminal proceedings throughout the European Union. The Directive would apply from the time that a person is made aware by the competent authorities of a Member State, by official notification or otherwise, that s/he is suspected or accused of having committed a criminal offence, until the conclusion of the proceedings (including any appeal). It does not, however, 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. European Arrest Warrant proceedings are explicitly covered.

The Criminal Law Committee has examined the proposal and has communicated oral views to the Commission and to the European Parliament. Below are listed the main concerns with the proposal, as identified to date by the Criminal Law Committee. It should be noted that the text of the proposal will change as it moves through the legislative procedure (latest version of the text is attached).

The following are the main concerns:

1. The Commission proposal did not originally refer to the right to silence. The right to silence has now been included in the proposal. The Criminal Law Committee believes that it is essential to insist on including the right to silence so as not to incriminate oneself in the catalogue of rights to which the letter of rights shall refer. There is general agreement and a series of rulings by the ECtHR that the said right is absolutely fundamental (see also Art. 14 (7) ICCPR, US Fifth Amendment etc.). Moreover, this right is expressly mentioned among those included in letters of rights and/or domestic legislation in a significant number of EU States. The fact that domestic legislation across the European Union diverges in respect to inferences to be drawn from silence should not bar inclusion of this right in the catalogue, because possible inferences do not mean that this right is not respected per se. It is essential therefore, that this fundamental right is included in the catalogue, which is already slim for a judicial area where procedural rights of individuals are proclaimed to be respected.
2. The Criminal Law Committee believes that the suspect should have access to the case file at an early enough point for him/her to be fully informed as to the basis of the investigation and to make a considered decision as to whether s/he wishes to say anything. It is important that the directive has a clear provision that there is a definite right of access to the case file and that the suspect must be informed about this right.
3. It is important to combine the right to have access to the case file (as contained in the Commission proposal) with the right to obtain copies of documents and other material, for example, photographs. Simple access to the case file is not sufficient to exercise defence rights effectively. The individual and his/her counsel should have the opportunity to study in peace all relevant documents and carefully prepare on this basis possible answers to the charges. The right to obtain copies of the documents, which is based on Art. 6 para. 3b ECHR, is currently provided for in some domestic legislation.
4. The Criminal Law Committee believes that the most important right that must be communicated to suspects is that they are entitled to have legal advice, including advice

provided for them at the expense of the State if they do not have the means to provide for themselves. In receiving competent legal advice, the suspect will therefore be in a position to be informed of all other relevant rights.

5. The proposal uses the word “promptly” on many occasions e.g. “provided promptly with information”. The Criminal Law Committee believes that the use of the word “promptly” is vague and should be replaced in many cases with the word “immediately”, as this would usually be more appropriate.

As mentioned above, the proposal is now at a Parliament stage (and the above concerns have been communicated to the Parliament), and it is expected that the wording will evolve as the text progresses. Further reports will be made as the proposal progresses.



**COUNCIL OF
THE EUROPEAN UNION**

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2010/0215 (COD)**

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Subject:	Proposal for a Directive of the European Parliament and of the Council on the right to information in criminal proceedings: - General approach

On 3 December 2010 the Council (Justice and Home Affairs) examined the draft text of the Directive of the European Parliament and of the Council on the right to information in criminal proceedings.

The Presidency presented the result of preliminary discussions in the preparatory bodies of the Council in doc. 16858/1/10 REV 1 DROIPEN 137 COPEN 265 CODEC 1368. It asked Ministers to express their point of view on the text.

Following the discussion, the Presidency concluded that there is broad support among Ministers for the text of the instrument as laid out in the Annex and that, based on that text, negotiations with the European Parliament could be initiated with a view to reaching an agreement on the proposed Directive.

2010/0215 (COD)

Proposal for a

DIRECTIVE .../.../EU OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL
on the right to information in criminal proceedings

THE EUROPEAN PARLIAMENT AND THE COUNCIL OF THE EUROPEAN UNION,
Having regard to the Treaty on the Functioning of the European Union, and in particular Article 82(2) thereof,

Having regard to the proposal from the European Commission,

After transmission of the draft legislative act to the national Parliaments,

Having regard to the opinion of the European Economic and Social Committee¹,

Having regard to the opinion of the Committee of the Regions²,

Acting in accordance with the ordinary legislative procedure,

Whereas:

- (1)³ The European Union has set itself the objective of maintaining and developing an area of freedom, security and justice. According to the conclusions of the European Council in Tampere of 15 and 16 October 1999, and in particular point 33 thereof, the principle of mutual recognition should become the cornerstone of judicial cooperation in both civil and criminal matters within the Union, since enhanced mutual recognition of judicial decisions and judgments and the necessary approximation of legislation would facilitate cooperation between authorities and the judicial protection of individual rights.

¹ OJ C , , p. .

² OJ C , , p. .

³ For the Recitals which correspond to those of Directive 2010/64/EU on the right to translation and interpretation in criminal proceedings, the text of the current instrument will be aligned to that of Directive 2010/64/EU at the stage of the revision by Jurist Linguists. Changes should only be made where they reflect the specific subject of the current Directive.

- (2) On 29 November 2000 the Council, in accordance with the Tampere Conclusions, adopted a programme of measures to implement the principle of mutual recognition of decisions in criminal matters⁴. The introduction to the programme of measures states that mutual recognition is "designed to strengthen cooperation between Member States" and "to enhance the protection of individual rights".
- (3) Implementation of the principle of mutual recognition of decisions in criminal matters presupposes that Member States have trust in each other's criminal justice systems. The extent of the mutual recognition exercise is very much dependent on a number of parameters, which include mechanisms for safeguarding the rights of suspected or accused persons and common minimum standards necessary to facilitate the application of the principle of mutual recognition.
- (4) Mutual recognition can only operate effectively in a spirit of confidence, whereby not only judicial authorities, but all actors in the criminal process see decisions of the judicial authorities of other Member States as equivalent to their own, implying not only trust in the adequacy of one's partners' rules, but also trust that those rules are correctly applied.
- (5) Article 47 of the Charter of Fundamental Rights of the European Union (the Charter) and Article 6 of the European Convention for the Protection of Human Rights and Fundamental Freedoms (ECHR) enshrine the right to a fair trial. Article 48 of the Charter guarantees respect for the rights of the defence.
- (6) Article 6 of the Charter and Article 5 of the ECHR enshrine the rights to liberty and security, the limitations to which may not exceed those permitted by the ECHR in the wording of its Article 5 and inferred from the case-law of the European Court of Human Rights.
- (7) Although Member States are parties to the ECHR, experience has shown that this in itself does not always provide a sufficient degree of trust in the criminal justice systems of other Member States.

⁴ OJ C 12, 15.1.2001, p. 10.

- (8) Strengthening mutual trust requires detailed rules on the protection of the procedural rights and guarantees stemming from the Charter and the ECHR.
- (9) Article 82(2) of the Treaty provides for the establishment of minimum rules applicable in the Member States so as to facilitate mutual recognition of judgments and judicial decisions and police and judicial cooperation in criminal matters having a cross-border dimension. Point (b) of Article 82(2) refers to "the rights of individuals in criminal procedure" as one of the areas in which minimum rules may be established.
- (10) Common minimum rules should lead to increased confidence in the criminal justice systems of all Member States, which in turn should lead to more efficient judicial cooperation in a climate of mutual trust. Such common minimum rules should apply to information in criminal proceedings.
- (11) On 30 November 2009, the Council adopted the Roadmap for strengthening procedural rights of suspected and accused persons in criminal proceedings ("the Roadmap")⁵. Taking a step-by-step approach, the Roadmap calls for the adoption of measures regarding the right to translation and interpretation, the right to information on rights and information about the accusation, the right to legal advice and legal aid, the right to communication with relatives, employers and consular authorities, and regarding special safeguards for suspected or accused persons who are vulnerable. The Roadmap emphasises that the order of the rights is indicative only and thus implies that it may be changed according to priorities. It is designed to operate as a whole; only when all its component parts have been implemented will its benefits be felt in full.
- (12) In the Stockholm Programme, adopted on 11 December 2009⁶, the European Council welcomed the Roadmap and made it part of the Stockholm Programme (point 2.4.). The European Council underlined the non-exhaustive character of the Roadmap, by inviting the Commission to examine further aspects of minimum procedural rights for suspected and accused persons, and to assess whether other issues, for instance the presumption of innocence, need to be addressed, in order to promote better cooperation in this area.

⁵ OJ C 295, 4.12.2009, p. 1.

⁶ OJ C 115, 4.5.2010.

- (13) The first measure on the Roadmap is a Directive of the European Parliament and of the Council on the rights to interpretation and to translation in criminal proceedings⁷.
- (14) The present Directive relates to measure B of the Roadmap. It lays down common minimum standards to be applied in the field of information about rights and about the accusation to be given to persons suspected or accused of having committed a criminal offence, with a view to enhancing mutual trust among Member States. The Directive builds on the rights laid down in the Charter, and in particular its Articles 6, 47 and 48 by building upon Articles 5 and 6 ECHR as interpreted by the European Court of Human Rights. In its Communication "Delivering an area of freedom, security and justice for Europe's citizens", the Action Plan Implementing the Stockholm Programme⁸, the Commission announced the presentation of a proposal on the right to information in 2010.
- (15) (...)
- (15a) In some Member States an authority other than a court having jurisdiction in criminal matters has competence for imposing sanctions in relation to relatively minor offences. That may be the case, for example, in relation to traffic offences which are committed on a large scale and which might be established following a traffic control. In such situations, it would be unreasonable to require that the competent authority ensure all the rights under this Directive. Where the law of a Member State provides for the imposition of a sanction regarding minor offences by such an authority and there is either a right of appeal or the possibility for the case to be otherwise referred to a court having jurisdiction in criminal matters, this Directive should therefore apply only to the proceedings before that court following such an appeal or referral.
- (16) The right to information about procedural rights (which is inferred from the case-law of the European Court of Human Rights) should be explicitly established by the Directive.

⁷ Directive 2010/64/EU of the European Parliament and of the Council on the rights to interpretation and translation in criminal proceedings of 20 October 2010.

⁸ COM(2010) 171, 20.4.2010.

- (17) (...)
- (18) The suspected or accused person should be informed in due time by the competent authorities of those rights, provided for under national law, which are essential to safeguard the fairness of the proceedings, be it orally or in writing, as provided for by this Directive. Information about those rights should as a minimum requirement under this Directive include information on the right of access to a lawyer, any entitlement to legal advice free of charge and the conditions for obtaining it, the right to interpretation and translation, the right to remain silent and, when the person is arrested, the information on the national law on the maximum length of deprivation of liberty before being brought before a judicial authority after arrest. This is without prejudice to information to be given on other procedural rights stemming from the Charter, the ECHR, national law and applicable EU legislation as interpreted by the relevant courts and tribunals.
- (18a) In order to allow a practical and effective exercise of those rights, this information should be provided in due time with respect to the moment when the rights first become applicable in the course of the proceedings, for instance before first police questioning. Once the information about a particular right has been provided, it is understood that the competent authorities should not be required to reiterate it, unless the specific circumstances of the case or the specific rules laid down in national law so require.
- (19) Where a suspected or accused person is arrested, information about applicable procedural rights should be given by means of a written Letter of Rights drafted in an easily comprehensible manner so as to assist the actual understanding of his rights. [To help Member States design such a Letter of Rights, a model of the Letter of Rights, which Member States may use, is provided in Annex I to the Directive. This model is indicative and may be subject to review in the context of the report on implementation to be presented by the European Commission pursuant to Article 12 of the Directive and also once all the Roadmap measures have come into force. The actual letter may also include other relevant procedural rights that apply in Member States] ⁹.

⁹ See footnote under Article 4(2).

- (19a) The arrested person should be allowed to keep in his possession the Letter of Rights throughout the time he is deprived of his liberty. However, under exceptional circumstances, when necessary to safeguard the safety of the person under arrest or another person, competent authorities may decide not to allow the arrested person to keep in his possession the Letter of Rights, provided that he has been fully informed about its content.
- (19b) (...).
- (19c) When providing the suspected or accused person with information in accordance with this Directive, competent authorities should pay particular attention to suspected or accused person who cannot understand or follow the content or the meaning of the information, owing, for example, to their young age, mental or physical condition.
- (20) A person accused of having committed a criminal offence should be given all the information on the criminal charge necessary to enable him to prepare his defence and to safeguard the fairness of the proceedings.
- (21) (...)
- (21a) For the purpose of this Directive, access to the materials of the case should include at least access to the material evidence, as defined in national law, which is for or against the suspected or accused person and in the possession of the competent authorities in relation to the specific criminal case. Such information may be contained in a case file or otherwise held by competent authorities in any appropriate way in accordance with national law.

- (21b) Access to the material evidence for or against the accused in the possession of the competent authorities, as provided for under this Directive, may be refused, according to national law, if this may lead to the serious risk for the fundamental rights of another person or if strictly necessary to safeguard an important public interest. This must be weighed against the rights of defence of the suspected or accused person, taking into account the different phases of the proceedings. These limitations should be interpreted strictly and in accordance with the principle of the right to a fair trial as provided by the ECHR and interpreted by case law of the European Court of Human Rights.
- (21c) Access to the materials of the case may be provided directly, by allowing consultation of the materials or documents contained therein, or indirectly, by providing copies or information about its contents, if so required by national law.
- (21d) Consultation of the materials of the case, as provided for by this Directive, should be provided free of charge. This is without prejudice to provisions of the national laws of the Member States requiring payment of any fees for copies to be extracted from the case file or for the sending costs to the person concerned or his lawyer.
- (22) (...)
- (22a) A suspected or accused person or his lawyer should have the right to challenge, in accordance with procedures in national law, the possible failure or refusal of the competent authorities to provide the information in accordance with this Directive. That right does not entail the obligation for Member States to provide for a specific appeal procedure, a separate mechanism or complaint procedure in which such failure may be challenged.
- (23) Without prejudice to judicial independence and differences in the organization of the judiciary across the Union, adequate training with respect to the objectives of this Directive should be provided to the relevant officials in Member States.

(23a) Member States should undertake all the necessary action to comply with this Directive. A practical and effective implementation of some of the provisions such as the obligation to provide the suspected or accused person with information on his rights in simple and accessible language could be achieved by different means including non legislative measures such as appropriate training for the competent authorities or by a Letter of Rights drafted in a simple and non technical language so as to be easily understood by a lay person without any knowledge of criminal procedural law.

(...)

(25) The right to be informed about rights on arrest provided for in this Directive should also apply, *mutatis mutandis*, to persons arrested for the purpose of the execution of a European Arrest Warrant according to the Council Framework 2002/584/JHA of 13 June 2002 on the European Arrest Warrant and the surrender procedures between Member States¹⁰. [To help Member States design such a Letter of Rights a model form of the Letter of Rights, which Member States may use, is provided in Annex II to the Directive. This model form is indicative and may be subject to review in the context of the report on implementation to be presented by the European Commission pursuant to Article 12 of the Directive and also once all the Roadmap measures have come into force]¹¹.

(26) The provisions of this Directive set minimum rules. Member States may extend the rights set out in this Directive in order to provide a higher level of protection in situations not explicitly dealt with in this Directive. The level of protection should never go below the standards provided by the ECHR, as interpreted in the case-law of the European Court of Human Rights.

(27) This Directive respects fundamental rights and observes the principles recognised by the Charter. In particular, this Directive seeks to promote the right to liberty, the right to a fair trial and the rights of the defence. It has to be implemented accordingly.

(28) Member States should ensure that the provisions of this Directive, where they correspond to rights guaranteed by the ECHR are implemented consistently with those of the ECHR and as developed by the relevant case-law of the European Court of Human Rights.

¹⁰ OJ L 190 of 18.7.2002, p.1.

¹¹ See footnote under Article 5 with regard to the Annex II.

- (29) Since the aim of achieving common minimum standards cannot be achieved by Member States acting unilaterally, either at national, regional or local level, and can only be achieved at Union level, the European Parliament and the Council may adopt measures in accordance with the principle of subsidiarity as referred to in Article 5 of the Treaty on European Union. In accordance with the principle of proportionality, as set out in the latter Article, this Directive does not go beyond what is necessary in order to achieve that objective.
- (30) In accordance with Articles 1, 2, 3 and 4 of Protocol on the position of the United Kingdom and Ireland in respect of the Area of Freedom, Security and Justice, annexed to the Treaty on European Union and to the Treaty on the Functioning of the European Union, the United Kingdom and Ireland have notified their wish to participate in the adoption and application of this Directive.
- (31) In accordance with Articles 1 and 2 of Protocol on the position of Denmark, annexed to the Treaty on European Union and to the Treaty on the Functioning of the European Union, Denmark is not taking part in the adoption of this Directive, and is therefore not bound by it or subject to its application,

HAVE ADOPTED THIS DIRECTIVE:

Article 1

Objective

The Directive lays down rules concerning the right to information about procedural rights in criminal proceedings and proceedings for the execution of a European arrest warrant and about the charge in criminal proceedings.

Article 2

Scope

1. This Directive applies from the time a person is made aware by the competent authorities of a Member State, by official notification or otherwise, as established by national law, that he is suspected or accused of having committed a criminal offence until the conclusion of the proceedings, which is understood to mean the final determination of the question whether the suspected or accused person has committed the offence, including, where applicable, sentencing and the resolution of any appeal.
2. (...)
3. Where the law of a Member State provides for the imposition of a sanction regarding minor offences by an authority other than a court having jurisdiction in criminal matters, and the imposition of such a sanction may be appealed to such a court, this Directive shall apply only to the proceedings before that court following such an appeal.

Article 3

The right to information about rights

1. Member States shall ensure that any person who is suspected or accused of having committed a criminal offence is provided with information concerning at least the following procedural rights as they apply under their national law:
 - the right of access to a lawyer;
 - any entitlement to legal advice free of charge and the conditions for obtaining it;
 - the right to interpretation and translation;
 - the right to remain silent.
- 1a. The information referred to in paragraph 1 shall be provided when these rights become applicable in the course of the proceedings and in due time to allow their effective exercise.
2. The information shall be provided in simple and accessible language.

Article 4

The right to written information about rights on arrest

1. Member States shall ensure that a person who is arrested is provided promptly with a written Letter of Rights containing information concerning at least the procedural rights referred to in Article 3(1) as they apply under national law, as well as information on national law on the maximum length of deprivation of liberty before being brought before a judicial authority after arrest. He shall be given an opportunity to read the Letter of Rights and be allowed, save for exceptional circumstances, to keep it in his possession throughout the time he is deprived of his liberty.

2. The Letter of Rights shall be drafted in simple and accessible language. [Annex I to this Directive contains an indicative model of such a Letter]¹².
3. Member States shall ensure that the suspected or accused person receives the Letter of Rights written in a language he understands. 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 he understands. A Letter of Rights in a language he understands shall then be given to him without undue delay.

Article 5

The right to written information about rights in European Arrest Warrant proceedings

Member States shall ensure that any person who is arrested for the purpose of the execution of a European Arrest Warrant receives promptly an appropriate Letter of Rights containing information on national law concerning at least the rights of that person as laid down in Articles 11, 13 (2) and 14 of the Framework Decision 2002/584/JHA. [Annex II to this Directive contains an indicative model of such Letter]¹³.

¹² There is agreement on the usefulness of having an indicative model of the Letter of Rights. The status and content of such model, including the question of whether it should be contained in an Annex to the present Directive, will be discussed once there is a position of the Council on the Recitals and the Articles.

¹³ See footnote under Article 4(2).

Article 6

The right to information about the accusation

1. Member States shall ensure that a person who is arrested is informed of the reasons for his arrest, including the criminal act he is suspected of having committed.
- 1a. Member States shall ensure that a person who is officially interviewed as a suspect or accused by the police or another competent authority in the course of a criminal proceeding is informed of the criminal act he is suspected of having committed.
2. Member States shall ensure that a person who is subject to a criminal charge is provided promptly with sufficient information on the nature and cause of the accusation to safeguard the fairness of the criminal proceedings and effectively exercise his right of defence.
3. The information referred to in paragraph 2 shall be provided in detail at the latest upon submission of the merits of the accusation to the judgement of a court and shall include:
 - (a) a description of the acts the accused is alleged to have committed, including time and place and
 - (b) the nature of the offence, including its legal classification.

Article 7

The right to access to the materials of the case

1. Where a person is arrested and detained at any stage of the criminal proceedings, Member States shall ensure that all information related to the specific case in the possession of the competent authorities and which is essential to effectively challenge according to national law the lawfulness of the arrest or detention, is made available to the arrested person or his lawyer.
2. Member States shall ensure that access is granted at least to all material evidence in the possession of the competent authorities for or against the suspected or accused person to that person or his lawyer to safeguard the fairness of the proceedings and to prepare the defence.
3. Without prejudice to paragraph 1, access to the materials referred to in paragraph 2 shall be granted in due time to allow the effective exercise of the right of defence and at the latest upon submission of the merits of the accusation to the judgement of a court. Where further material evidence comes into the possession of the competent authorities, access shall be granted to it in due time to allow for it to be considered.
4. As an exception to paragraphs 2 and 3, provided that this does not prejudice the right to a fair trial, access to certain materials may be refused if it may lead to serious risk for the fundamental rights of another person or if it is strictly necessary to safeguard an important public interest, such as in the cases where it risks jeopardizing an ongoing investigation, or where it may seriously harm the national security of the Member State in which the proceedings take place.
5. The information or access referred to in this Article shall be provided free of charge.

Article 8

Verification and remedies

1. Member States shall ensure that when information is provided to the suspected or accused person in accordance with Article 4(1), 5 and 6(1a) of this Directive, this will be noted, using the recording procedure in accordance with the law of the Member State concerned.
2. Member States shall ensure that a suspected or accused person or his lawyer 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 in accordance with this Directive.

Article 9

Training

Without prejudice to judicial independence and differences in the organisation of the judiciary across the Union, Member States shall request those responsible for the training of judges, prosecutors, police and judicial staff involved in criminal proceedings to provide appropriate training with respect to the objectives of this Directive.

Article 10

Non-regression clause

Nothing in this Directive shall be construed as limiting or derogating from any of the rights and procedural safeguards that are ensured under the European Convention for the Protection of Human Rights and Fundamental Freedoms, other relevant provisions of international law or the law of any Member States which provide a higher level of protection.

Article 11

Transposition

1. Member States shall bring into force the laws, regulations and administrative provisions necessary to comply with this Directive by...¹⁴ .
2. Member States shall transmit the text of those measures to the Commission.
3. When Member States adopt those measures they shall contain a reference to this Directive or be accompanied by such a reference on the occasion of their official publication. The methods of making such reference shall be laid down by the Member States.

Article 12

Report

The Commission shall, by¹⁵ submit a report to the European Parliament and to the Council, assessing the extent to which the Member States have taken the necessary measures in order to comply with this Directive, accompanied, if necessary, by legislative proposals.

Article 13

Entry into force

This Directive shall enter into force on the twentieth day following its publication in the *Official Journal of the European Union*.

¹⁴ 24 months after publication of this Directive in the *Official Journal*.

¹⁵ 36 months after publication of this Directive in the *Official Journal*.

Article 14

Addressees

This Directive is addressed to the Member States in accordance with the Treaties.

Done at Brussels,

For the European Parliament

The President

For the Council

The President



Indicative model Letter of Rights for suspected and accused persons on arrest:

The sole purpose of this model is to present an illustration of a Letter of Rights with a view to helping the national authorities when preparing such Letter at national level:

If you are arrested by the police you have the following rights as they apply under national law:

- 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.

¹ The status and content of the model of Letter of Rights, including the question of whether it should be contained in an Annex to the present Directive, will be discussed once there is a position of the Council on the Recitals and the Articles.

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.
- 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 *² 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.

² (...)



Indicative model Letter of Rights for persons arrested on the basis of a European Arrest Warrant:

The sole purpose of this model is to present an illustration of a Letter of Rights with a view to helping the national authorities when preparing such Letter at national level:

If you are arrested by the police on the basis of a European Arrest Warrant you have the following rights as they apply under national law:

- 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.

¹ The status and content of the model of Letter of Rights, including the question of whether it should be contained in an Annex to the present Directive, will be discussed once there is a position of the Council on the Recitals and the Articles.

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.
