

HANDBOOK

EUROPEAN LAWYERS DAY 2016

ACCESS TO
JUSTICE

Access your **lawyer** to access your **rights**.

— 10 DECEMBER 2016 —

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FOREWORD

James MacGuill, Chair of the CCBE Criminal Law Committee





At a national level, we can very often be removed from the events that are taking place at a European level. As Chair of the CCBE Criminal Law Committee, I would like to congratulate the European Union institutions for their commitment towards developing rights for suspects and defendants in criminal proceedings. Much has been achieved over recent years with the result that we now have a body of rights through various EU Directives which will ensure that citizens have the same basic rights in their dealings with criminal justice systems, regardless of the country where the person is suspected or accused of having committed a crime.

The achievement of such rights has not been an easy journey. However, the CCBE has been delighted to have the opportunity to play its part through various position papers, meetings, conferences and presentations. Our work is not over as the CCBE is also monitoring the implementation of these Directives at a national level to ensure their correct implementation.

While all procedural rights and safeguards are important, as Chair of the Criminal Law Committee, I would like to emphasise the importance of the Access to a lawyer Directive – the theme of this year's European lawyers Day. The value of this Directive cannot be emphasised enough. Having the right of access to a lawyer allows a suspect or defendant to have access to all other rights. Access to a lawyer is an all-embracing right which allows for the proper and fair preparation of the defence case. It is an essential right and an essential part of the fair-trial process.

Thank you to all involved.

James MacGuill
Chair, CCBE Criminal Law Committee

BASIC INFORMATION ABOUT EUROPEAN LAWYERS DAY

1. Purpose
2. Date
3. Participants
4. Theme “Access your lawyer to access your rights”
5. Activities
6. World Human Rights Day
7. Resources
8. Contact



Purpose

European Lawyers Day is a day that celebrates the rule of law and the legal profession's intrinsic role in its defence, as well as lawyers' common values and contribution to the justice system.

Date

The first European Lawyers Day on "Lawyer-Client Confidentiality" took place on 10 December 2014, in conjunction with World Human Rights Day (see below), and the second on "Freedom of Expression" took place on 10 December 2015. The third European Lawyers Day will also take place on 10 December 2016, but given that this year it falls on a Saturday, events will be organised throughout the week of 5-10 December.

Participants

It is intended that European Lawyers Day programmes and activities will be organised by national and local bars, or any person or group working with a national or local bar (lawyers, courts, law schools and students, youth groups, and community organisations) that would like to educate the public on the crucial role of the rule of law and the legal process in protecting citizens' rights.

Theme "Access your lawyer to access your rights"

An annual theme is chosen to illustrate how a specific aspect of law affects citizens and their rights.

For the 2016 edition of European Lawyers Day, the CCBE proposes the central theme of "Access to Justice". Access to Justice is indeed a main concern of the legal profession, and is an essential part of its core mission. However, since one European voice is preferred, we suggest to concentrate on the subtopic of "access your lawyer to access your rights", with a focus on access to a lawyer in criminal proceedings, guaranteed across EU Member States¹ through Directive 2013/48.

The CCBE wishes to highlight that having access to a lawyer provides a person with access to all their rights. Lawyers are uniquely positioned to inform citizens and to give effect to their rights.

The right to legal assistance in criminal proceedings is a fundamental right enshrined in the European Convention of Human Rights, the Charter of Fundamental Rights of the EU, and the United Nations Basic Principles on the Role of Lawyers. Moreover, the CCBE has been heavily involved in the legislative process regarding six Directives in the area of criminal procedural law three of which are now in force and which seek to enhance procedural safeguards for citizens and introduce the right to interpretation and translation, the right to information, and the right of access to a lawyer. The CCBE has recently completed a study on these three Directives.

However, the Access to a Lawyer Directive (2013/48) is the most relevant Directive for the chosen theme. It is a new Directive that must be implemented by 27 November 2016, perfectly coinciding with European Lawyers Day. The Directive specifies provisions on:

- » The right of access to a lawyer in criminal proceedings;
- » The right to confidentiality;
- » The right to have a third person informed of the deprivation of liberty;
- » The right to communicate, while deprived of liberty, with third persons;

1. Excluding Denmark, Ireland and the UK.



- » The right to communicate with consular authorities;
- » Conditions regarding waiver of these rights.

The Access to a Lawyer Directive is the ultimate recognition of the role and added value of a lawyer in the pursuit of the rights of citizens. The lawyer is a professional, a specialist with experience in legal processes and individual rights, in helping the client to better assess their rights and how to adequately achieve them. The intervention of a lawyer is beneficial for everyone, since their expertise contributes to professional exchanges and adequate solutions.

Furthermore, the Find-A-Lawyer tool developed by the CCBE can also be highlighted in this respect as an important instrument to exercise this right in cross-border proceedings.

The material provided in this handbook will thus be two-fold. Firstly, information on the Access to a Lawyer Directive. Secondly, information on Find-a-Lawyer, so that citizens may better understand not **only that they have the right to a lawyer, but also how to find a lawyer.**

Activities

Each member bar and law society is invited to encourage its members to organise events, publish educational material and/or conduct other programmes that promote citizens' awareness of the European Lawyers Day theme.

World Human Rights Day

In 1950, the United Nations (UN) General Assembly declared 10 December as 'Human Rights Day' to bring attention to the Universal Declaration of Human Rights (UDHR) as the common standard of achievement for all people and nations. In the aftermath of World War II, the General Assembly's adoption and proclamation of the UDHR on 10 December 1948 marked the first global enunciation of human rights.

Resources

An event poster, press releases, relevant position papers, and other related online research resources will be available on the CCBE's website: <http://www.ccbe.eu/actions/european-lawyers-day/>.

Contact

Madeleine Kelleher (kelleher@ccbe.eu) is available for any questions or comments that you may have regarding European Lawyers Day.

INFORMATION ON THE THEME “ACCESS YOUR LAWYER TO ACCESS YOUR RIGHTS”

1. Access to a lawyer
2. Find-a-Lawyer





Access to a lawyer

EU procedural safeguards and Directive 2013/48 on the right of access to a lawyer

At an EU level, much has been achieved regarding common minimum standards of procedural rights for suspects and defendants in criminal proceedings. This has been motivated by a desire to ensure that the basic rights of suspects and accused persons are protected sufficiently across EU Member States.

The importance of minimum standards cannot be overstated. Common minimum standards are necessary in order to ensure that judicial decisions taken by one EU Member State can be recognised by other EU Member States according to the principle of mutual recognition. In order to have mutual recognition there must be mutual trust. Mutual trust is assisted, promoted and developed through common standards.

To achieve such standards and create the basis for mutual trust, the EU has developed over a number of years several procedural rights and safeguards in the area of criminal proceedings. The CCBE was delighted to play an active role in contributing to the legislative process:

To date the EU has agreed the following Directives:

- » Directive 2010/64 on the right to interpretation and translation (these rights have applied across the EU since 27 October 2013).
- » Directive 2012/13 on the right to information (these rights have applied across the EU since 2 June 2014).
- » [Directive 2013/48 on the right of access to a lawyer](#) (these rights will apply across the EU as from 27 November 2016).
- » Directive 2016/343 on the strengthening of certain aspects of the presumption of innocence and of the right to be present at the trial in criminal proceedings (these rights will apply across the EU as of 1 April 2018).
- » Directive (EU) 2016/800 on procedural safeguards for children who are suspects or accused persons in criminal proceedings (these rights will apply across the EU as of 11 June 2019).
- » The EU has also agreed a legal aid Directive which will apply across the EU as of May 2019.

This year the CCBE would like to highlight [Directive 2013/48 on the right of access to a lawyer](#).

Directive 2013/48 on the right of access to a lawyer

The task of a lawyer is, *“among other things, to help to ensure respect of the right of an accused not to incriminate himself. This right indeed presupposes that the prosecution in a criminal case seeks to prove their case against the accused without resort to evidence obtained through methods of coercion or oppression in defiance of the will of the accused. Early access to a lawyer is part of the procedural safeguards to which the Court will have particular regard when examining whether a procedure has extinguished the very essence of the privilege against self-incrimination. In this connection, the Court also notes the recommendations of the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT), in which the CPT repeatedly stated that the right of a detainee to have access to legal advice is a fundamental safeguard against ill-treatment.”* ECtHR, *Salduz v. Turkey*, 27 November 2008, § 54.



Directive 2013/48/EU on the right of access to a lawyer in criminal proceedings and in European arrest warrant proceedings, and on the right to have a third party informed upon deprivation of liberty and to communicate with third persons and with consular authorities while deprived of liberty.

Key points:

- » The Access to a lawyer Directive was adopted by the European Parliament and the Council of the European Union on 22 October 2013.
- » The Directive lays down minimum rules concerning the right of access to a lawyer (a) in criminal proceedings, and (b) in European arrest warrant proceedings
- » The Directive also regulates two other defence rights, the right to have a third party informed upon deprivation of liberty, and the right to communicate with a third person
- » and with consular authorities while deprived of liberty.
- » The Directive aims to ensure that minimum standards are applied throughout the EU - 25 Member States will participate in the adoption of the Directive (Denmark, Ireland and the UK are not taking part and are therefore not bound by it).
- » The Directive is an important piece of legislation. It follows the European Court of Human Rights (ECtHR) case of *Salduz v. Turkey* (2008), which established the right of access to a lawyer in police questioning and led to significant reform across many EU member states.
- » The Directive to a large extent codifies the case law of the Strasbourg court since the *Salduz* case regulating primarily a right of access to a lawyer and other fair trial rights in the pre-trial phase of criminal proceedings.
- » The Draft follows the *Salduz* doctrine by imposing a duty on state authorities to allow suspects to have access to a lawyer of their choosing as soon as possible and upon deprivation of their liberty and prior to questioning by police or other competent authorities at the latest. Lawyers shall have the right not only to be present but also to actively participate in the questioning of their clients as well as in other important investigative acts.
- » The Directive lays down minimum rules or minimum standards for the rights of suspects and accused person – Member States are permitted to go beyond the provisions of the Directive.
- » The Directive will guarantee that all suspects will have the right to be advised by a lawyer in criminal proceedings and in European arrest warrant proceedings, and, on arrest and during detention, may communicate with their family and with consular authorities, if they are outside their home country.
- » In summary, the Directive:
 - › provides a right of access to a lawyer from the first stage of police questioning and throughout the criminal proceedings;
 - › allows a right to adequate, confidential meetings with the lawyer for the suspect to effectively exercise their defence rights;
 - › allows the lawyer to play an active role during questioning;



- › offers people subject to a European Arrest Warrant (EAW) the possibility of legal advice in both the country where the arrest is carried out and the one where the EAW was issued;
 - › ensures that, when a suspect is arrested, somebody such as a family member can be made aware of that arrest and that there is an opportunity for the suspect to communicate with their family;
 - › allows suspects abroad to be in contact with their country's consulate and receive visits;
- » EU countries² have until 27 November 2016 to implement the Directive.

Find-a-Lawyer

Now that the right of access to a lawyer has been guaranteed at European level, it is important that citizens know how to find such a lawyer. The following section provides information on the Find-A-Lawyer (FAL) Search Engine.

The Find-A-Lawyer (FAL) Search Engine is an online search facility which simplifies the process of finding the right lawyer in any EU Member State, through common search criteria (city, postal code, practice area, language, professional title, specialisation and lawyer's name) and a single point of entry. The search engine was developed in 2010 by the CCBE together with participating national bars and was publicly launched on the European Commission's e-Justice portal on 8 December 2014. Since then, it has been continuously up and running on the e-Justice portal, facilitating the access to a lawyer for every EU citizen. With the FAL Search Engine national boundaries, different languages, different legal terms and different databases should no longer impede a citizen's access to a lawyer. At the same time, access to justice in Europe becomes easier, faster and more equal.

The FAL Search Engine has simplified the process of searching for a lawyer in different EU Member States in three different ways. Firstly, the multilingual interface of the e-Justice portal enables citizens to use the FAL Search Engine in their native EU language. Secondly, the FAL Search Engine has created a single point of entry for the different national databases by including harmonised search criteria and common practice areas in a user-friendly user interface. Thirdly, the need to know the intricacies of the legal profession in a specific country disappears through the explanatory texts which guide the user of the search engine before he/she makes the selection of the competent bar.

The FAL Search Engine is the first search facility which centralises lawyers' information in a free one-stop-shop solution. Further, it is the only reliable and comprehensive European lawyers' search engine which is managed solely by participating bars and law societies, making it qualitatively different from other self-selecting or commercial databases. FAL is also the first search engine which allows European citizens to run real time searches for lawyers in their mother tongue and from a single online source. Finally, due to the increased visibility of the FAL Search Engine, which is currently hosted on the e-Justice portal, services offered by lawyers at national level are exposed to a much larger, EU-wide audience.

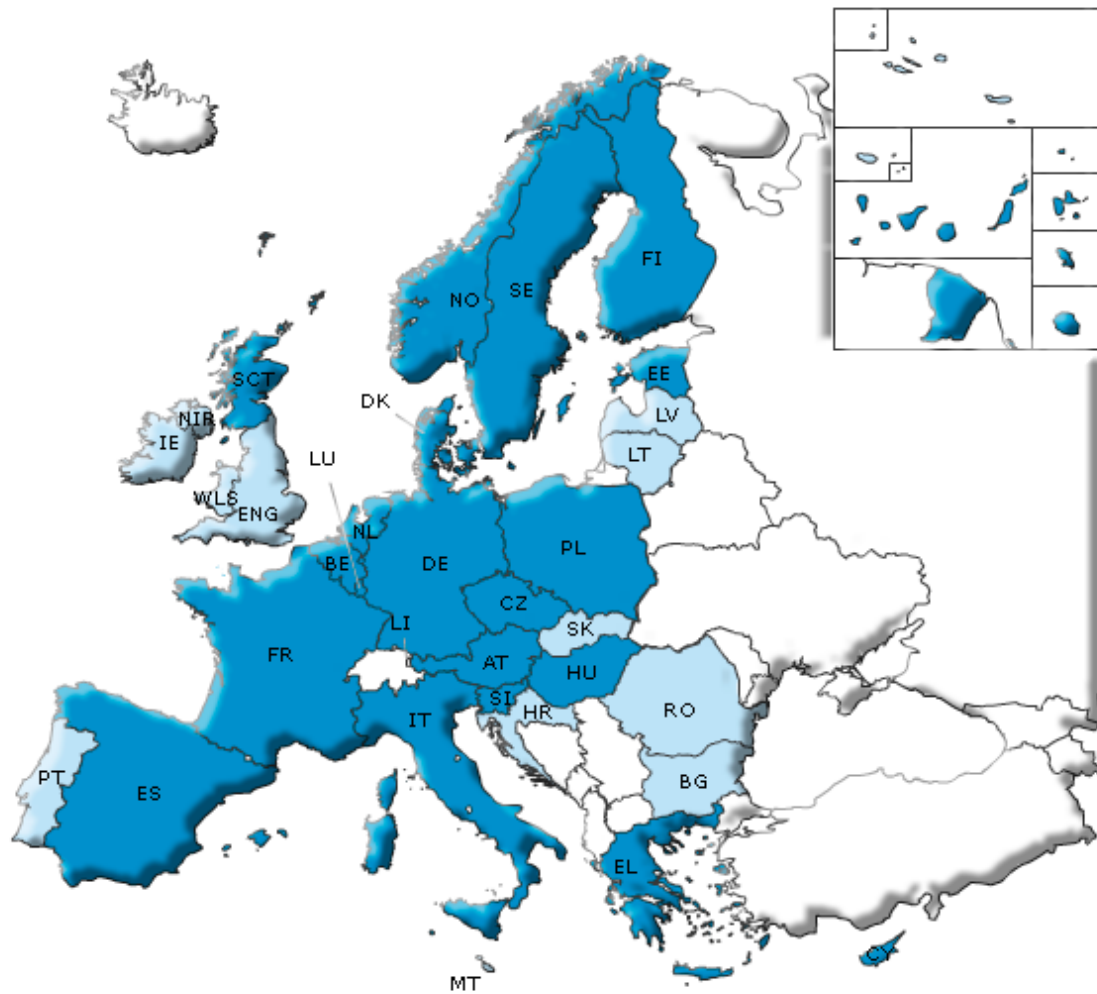
² Except Denmark, Ireland and the UK.



The countries

Below is the complete list of national bars and law societies which are currently up and running and thus searchable on the e-Justice portal. The map which follows is a screenshot from the e-Justice portal, where participating countries appear in dark blue colour. More bars are expected to join the project soon and full coverage seems a realistic target in the near future.

1.	Austria
2.	Belgium – OBFG
3.	Belgium – OVB
4.	Cyprus
5.	Czech Republic
6.	Denmark
7.	Estonia
8.	Finland
9.	France
10.	Germany
11.	Greece
12.	Hungary
13.	Italy
14.	Lithuania
15.	Luxembourg
16.	Netherlands
17.	Norway
18.	Poland – Attorneys
19.	Poland – Advocates
20.	Scotland – Faculty of Advocates
21.	Scotland – Law Society
22.	Slovenia
23.	Spain
24.	Sweden



- We are sorry, but only EU/EEA member states are supported.
- Non-participating/temporarily unavailable country
- Participating country

While the citizens' interface is hosted as one of the e-Justice portal applications, the lawyer's data remain located in the national databases, which stay under the exclusive control and ownership of the national bars or law societies concerned, who alone maintain updated information on all qualified lawyers.



The practice areas

Below is the list of 20 common FAL practice areas as displayed to the user of the FAL Search Engine. The list of common practice areas was agreed in the course of the project with a common decision of all CCBE delegations.

1.	Bankruptcy and insolvency law
2.	Commercial law
3.	Consumer law
4.	Criminal law
5.	Employment law
6.	Environmental law
7.	EU law
8.	Family law
9.	Human rights and civil liberties
10.	Immigration and asylum law
11.	Intellectual property
12.	Information Technology (IT) law
13.	Litigation, mediation, arbitration
14.	Personal injury, damage to goods
15.	Property law
16.	Public law
17.	Social security law
18.	Succession law
19.	Tax law
20.	Traffic and transport law

FURTHER INFORMATION





Here are links to texts which provide additional information on the themes and topics mentioned above:

- » **The Access to a Lawyer Directive 2013/48/EU**
<http://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32013L0048&from=EN>
- » **European Commission's Citizen guide on rights if accused or suspected of criminal offences in the EU**
http://ec.europa.eu/justice/criminal/files/factsheet_procedural_rights_package_en.pdf
- » **Fair Trials' Roadmap Practitioner Toolkit: Access to a Lawyer Directive**
<https://www.fairtrials.org/wp-content/uploads/A2L-Toolkit-FINAL.pdf>
- » **ECtHR, Salduz v. Turkey, 27 November 2008**
<http://hudoc.echr.coe.int/eng?i=001-89893>
- » **The EU Directive on the Right of Access to a Lawyer: A Guide For Practitioners**
[http://eujusticia.net/images/uploads/pdf/Right_of_Access_to_a_Lawyer_Practitioners_Guide_\(1\).pdf](http://eujusticia.net/images/uploads/pdf/Right_of_Access_to_a_Lawyer_Practitioners_Guide_(1).pdf)
- » **The Fundamental Rights Agency's Handbook on European law relating to access to justice**
http://fra.europa.eu/sites/default/files/fra_uploads/fra-ecthr-2016-handbook-on-access-to-justice_en.pdf
- » **European Court of Human Rights Factsheet – Police arrest and assistance of a lawyer**
http://www.echr.coe.int/documents/fs_police_arrest_eng.pdf
- » **TRAINAC: Assessment, good practices and recommendations on the right to interpretation and translation, the right to information and the right of access to a lawyer in criminal proceedings**
http://www.ccbe.eu/fileadmin/speciality_distribution/public/documents/CRIMINAL_LAW/CRM_projects/EN_CRM_20160418_TRAINAC-An-assessment-by-defence-practitioners-of-the-implementation-of-three-procedural-safeguards-directives.pdf

In addition, we will continue to provide additional resources in the run up to the day. Please check our website regularly so that you may benefit from these resources.

PUBLICISING YOUR EVENT





Publicising your European Lawyers Day events and activities is a key component of making them successful.

Here are some ideas on how to raise awareness about your European Lawyers Day events:

» **Send out Press Releases**

The CCBE will be providing an official European Lawyers Day poster for its members for their use and distribution.

» **Submit Articles for Publication**

See <http://www.ccbe.eu/actions/european-lawyers-day/> for resources that member bars may use in their press coverage or communication of the event.

» **Address Local Groups**

Contact the organisers of upcoming meetings of community groups (e.g., school boards) and ask to be allotted time on the agenda to briefly discuss European Lawyers Day. If this is not feasible, ask the organiser if he/she would be willing to publicise your event.

» **Use Social Media**

Get the word out: Facebook, Twitter, and LinkedIn all provide excellent opportunities to advertise an event. For your Tweets, use the hashtag #EuropeanLawyersDay to give visibility among others looking for European Lawyers Day-related communications. Link to a page with more detailed information about your event.

Don't forget to notify the CCBE so that your event or activity can be posted on the European Lawyers Day website: <http://www.ccbe.eu/actions/european-lawyers-day/>.

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Throughout Europe, in conjunction with World Human Rights Day.

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