

Commission Implementation Report on Access to Lawyer Directive



Thomas Wahl

News

On 27 September 2019, the European Commission published its [implementation report on Directive 2013/48/EU](#) on the right of access to a lawyer. The Directive is one of the six EU procedural rights directives that aim to harmonise safeguards of suspected or accused persons in criminal proceedings throughout the European Union.

The so-called [A2L Directive](#) ensures, *inter alia*, that individuals have a lawyer from the first stage of police questioning and throughout criminal proceedings. Adequate, confidential meetings with the lawyer are also guaranteed. In European Arrest Warrant proceedings, the Directive lays down the right of access to a lawyer in the executing EU country and the right to appoint a lawyer in the issuing country.

Beyond the right of access to a lawyer, the Directive also includes the rights for persons deprived of their liberty to have a third person informed thereof, to communicate with third persons, and to communicate with consular authorities/to have legal representation arranged for by them.

The report concludes that considerable progress has been made in the protection of fair trial rights in the EU, but difficulties regarding key provisions of the Directive exist in a number of Member States.

Points of concern are as follows:

- The scope of rights enshrined in the Directive: some jurisdictions require a formal act that triggers the right of access to a lawyer or do not apply the right to persons who have not been deprived of liberty;
- The extent of possible derogations;
- Waiver of the right of access to a lawyer;
- Conditions governing how people can access a lawyer in the issuing Member State of a European Arrest Warrant.

On 12 November 2019, the Commission discussed the report with MEPs in the EP's LIBE Committee. The Commission announced that it will continue to assess Member States' compliance with the Directive and take every appropriate measure, including possible infringement proceedings, to ensure conformity with the provisions of the Directive throughout the European Union.

The Commission's implementation report comes alongside a report from the Fundamental Rights Agency on the practice of eight EU Member States. The latter investigated the implementation of certain defence rights, including the right to be advised and represented by a lawyer.

AUTHOR

Thomas Wahl

Senior Researcher
Max Planck Institute for the
Study of Crime, Security and
Law

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